

VOLUME FOUR

**Truth and
Reconciliation
Commission
of South Africa
Report**



The report of the Truth and Reconciliation Commission was presented to President Nelson Mandela on 29 October 1998.



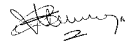
Archbishop Desmond Tutu
Chairperson



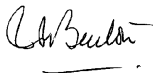
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Dr Alex Boraine
Vice-Chairperson



Mr Dumisa Ntsebeza



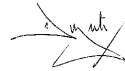
Ms Mary Burton



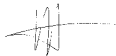
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Revd Bongani Finca



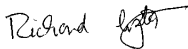
Adv Denzil Potgieter



Ms Sisi Khampepe



Dr Fazel Randera



Mr Richard Lyster



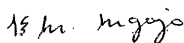
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Mr Wynand Malan*



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Revd Khoza Mgogo

* Subject to minority position. See volume 5.

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Foreword and Context of Institutional and Special Hearings

■ INTRODUCTION

- 1 An important debate with which the Commission had to wrestle was, as has been fully discussed in the chapter on *The Mandate*, how to paint the backdrop against which such human rights violations occurred. Without some sense of the “antecedents, circumstances, factors and context” within which gross violations of human rights occurred, it is almost impossible to understand how, over the years, people who considered themselves ordinary, decent and God-fearing found themselves turning a blind eye to a system which impoverished, oppressed and violated the lives and very existence of so many of their fellow citizens.
- 2 It is an old question: one that is asked of any country that undertakes acts so foul that the world openly condemns it. It is a question that has been answered in different ways, for such is the nature of historical debate. However, what is clear is that apartheid could only have happened if large numbers of enfranchised, relatively privileged South Africans either condoned or simply allowed it to continue.
- 3 How did so many people, working within so many influential sectors and institutions, react to what was happening around them? Did they know it was happening? If they did not know, or did not believe it was happening, from where did they derive their ignorance or their misunderstanding? Why is it only with hindsight that so many privileged members of society are able to see that what they lived through was a kind of madness and, for those at the receiving end of the system, a kind of hell?
- 4 One of the things one needs to remember is that the greater majority of South Africans knew only one system of government (although the foundation for apartheid was, as mentioned elsewhere, laid much earlier). This means that those who were born, went to school, took jobs and raised families knew only one society – the apartheid society. To those who reaped its benefits, it was an

extremely comfortable society. But what is important is that they knew no other. It was a closed world, surrounded by fences, prohibitions and some terrible assumptions about their fellow countrymen and women.

- 5 There were those, of course, from the heart of the privileged community who not only *did* know what was happening, but condemned it. In the process, they themselves became victims of government action. But, significantly for this argument, their credibility was frequently also questioned by those around them, and their simple humanitarian responses often resulted in rejection by members of their own communities. Part of the explanation lies in the state's demonisation of its opponents and, quite probably, in a wish to avoid the obligations that knowledge implied. Yet the question remains, if some knew, why did others not know and believe?

■ INSTITUTIONAL HEARINGS

- 6 It was in search for the beginning of an answer to these questions that the Commission decided to host a number of hearings on the role of some of the influential sectors of the apartheid society. Clearly, there were time restraints, requiring the Commission to limit its focus. A number of institutions were identified: the media, business, prisons, the faith community, the legal system and the health sector. All these sectors had, over the years, come under attack for what was seen by some as their complicity with the apartheid system. What the Commission sought to find out was how these institutions saw themselves and how, brought together with those who had opposed them, a part of the enigma of the South African evil could be unravelled.
- 7 It was considered extremely important that both 'sides' should be present and able to speak at the hearings of their perceptions and experiences. Sometimes the Commission was successful in obtaining the participation of all role-players, and sometimes it was not. Some refused the invitation of the Commission.
- 8 Often the hearings revealed just how far apart the opposing views were. But there were some heartening moments. There were signs that the hearings triggered a kind of self-analysis, a mood of introspection that may lead to a deeper realisation of the need for commitment to a new society and a culture of human rights.
- 9 At the end of each chapter, there is a set of findings the Commission made after the hearings and, in the chapter on *Recommendations* in the last volume of this report, the Commission gave serious thought to ways to ensure the transformation of society.

■ SPECIAL HEARINGS

- 10 The last three chapters in this volume are of a different kind. They focus on three areas that, the Commission felt, warranted individual attention.
- 11 The Commission decided to host a hearing on compulsory military service. It was a difficult decision and one that followed a great deal of debate. It was clear that conscripts could not as a rule be described as victims of gross violations of human rights as defined in the Act. Some of the evidence that emerged at the hearing, however, showed that they were victims of another kind – victims of a system they found themselves obliged to defend.
- 12 The chapter on children and youth describes the devastating effects of apartheid on young people in South Africa. It also pays tribute to the extraordinary heroism of generations of young people who risked their education, their safety and often their lives for a better society. Many of them today are greatly the poorer for their sacrifice. Many others did not live beyond their teens and became victims of the system against which they struggled.
- 13 The chapter on women reports on a series of hearings that were held at which women were given the opportunity to speak on their own behalf. It was discovered early in the life of the Commission that the majority of women who came forward to testify did so on behalf of others and seldom on their own account. It was also felt necessary to give women the opportunity, amongst members of their own sex, to speak of the particular violations experienced by women and, also, the particular way in which women experience violations.
- 14 The following chapters do no more than summarise the events that took place at the hearings. The full transcripts are to be found in the National Archives. However, beyond the documents, the Commission hopes that the legacy of these hearings will be to stimulate further debate, further discussion and further exploration of the difficult and complex issues that underpinned apartheid.

■ A NOTE ON NAMES

- 15 Every attempt has been made to check and re-check the names of people who approached the Commission, made statements or are otherwise quoted. Inconsistent spellings emerged in the transcripts, in statements and frequently the same name was spelt in a variety of different ways. Where there are errors, despite all efforts to ensure that names are correctly spelt, the Commission apologises.
- 16 In addition, the Commission decided, for the purposes of its report, that the titles of Mr and Ms would be used throughout. This is not to fail to acknowledge that some women might still prefer to be addressed as Mrs or Miss or even Mama and does not constitute a social or political comment on their right to do so. It was simply a decision that was taken in order to ensure uniformity and, of course, to eliminate error where the marital status of the person was unknown.

■ CONCLUSION

- 17 The journey between 1960 and 1994 was a long and terrible one, wasteful of human life and of human potential. Yet, it was a path that everyone travelled.
- 18 Today, South Africans have embarked on another journey. Some travel joyfully into the future. Others still carry their baggage, uncertain of whether or how to dispose of it. Thus, although it is a collective journey, it is also an individual journey. A journey that depends on our ability to examine with honesty and with humility the role we have played in the past and, more importantly, what role we can – as individuals and as institutions – play in the future.
- 19 The Commission hopes that the hearings reported on in this volume may provide some guidance on a way forward.

■ APPENDIX

Submissions to the Commission

The Commission received numerous formal submissions, written statements and opinions during its existence. At the time of reporting, the Records Management Department of the Commission was making every effort to record this material.

Amnesty investigations were, however, still underway at the time of reporting. In addition, the cataloguing of some material from the Commission's regional offices was incomplete and some documentation, used in the writing of the Commission's report, had not yet been lodged in the Records Management Department.

The inventory that follows lists submissions made to the Commission and lodged in the Records Management Department at the time of going to press. The documentation originates either from unsolicited representations made to the Commission or in response to requests for submissions relating to Commission hearings. It does not include documentation accessed by the Commission from the National Archives, the civilian intelligence services, the archives of security forces or other documentation used for research and investigative purposes.

The complete inventory of all documentation accessed by the Commission will become available in due course.

CATEGORY	NAME
Armed Forces and Police	African National Congress
	Azanian Peoples' Liberation Army
	Barnard, L D
	De Haas, M
	Foundation for Equality before the Law: Stadler, H D
	Hechter, J
	Liebenberg, W R
	Malan, M A de M
	Ministry of Defence
	Molebeleli, T
	National Intelligence Agency
	Odendal, C A J
	Schoon, W F

	South African National Defence Force
	South African Police Service
	Van der Merwe, J V
	Williamson, C M
Business and Labour	Afrikaanse Handelsinstituut
	Anglo American Corporation of South Africa Ltd
	Anti-Apartheid Movement
	Armaments Corporation of South Africa (ARMSCOR)
	Avalon Cinemas South Africa (Pty) Ltd
	Ball, C
	Bernstein, A
	Black Management Forum
	BMW South Africa
	Brown, G D
	Building Industries Federation of South Africa
	Bulk Commodities International
	Centre for Policy Studies
	Chamber of Mines
	Coleman, A
	Congress of South African Trade Unions
	Consultative Business Movement
	Crawford-Browne, T
	De Castro-Moura, M M
	Development Bank of Southern Africa
	Economic Advisory Council: Warren Clewlow
	Eskom
	Ex-Ford Workers Committee
	Federated Mining and Allied Industries Workers Union
	Flynn, L
	Food and General Workers Union
	Foundation of African Business and Consumer Services
	Fourie, R
	Genkor Limited
	German Chamber of Commerce and Industry
	Groenendijk, C
	Hulett Aluminium (Pty) Ltd
	Investor Victims Association
	Islamic Chamber of Commerce and Industry
	Johannesburg Chamber of Commerce and Industry
	Juergensen, B
	Jumuna, N
	Land and Agricultural Bank of South Africa

Loyson, M
Mercedes-Benz S A
Mkhwanazi, D
Muller, K M
Nampak Limited
Narrandes, C
National African Federated Chamber of Commerce and Industry
National Association of Automobile Manufacturers of South Africa
National Business Initiative for Growth, Development & Democracy
National Campaign on the Apartheid Debt
National Small Business Council
Old Mutual
Padayachi, N
Phaswana, F
Rakgahla and Associates
Reichenberg and Co.
Rembrandt Group Ltd
Reynecke Inc. for Financial Research Foundation
Rosholt, A M
Rubenstein Finance Company
Rupert, E A
South African Breweries
South African Motor Industry Employers' Association
South African Reserve Bank
Sanlam
Shell South Africa
Simkins, C
Soller and Manning
South African Black Technical and Allied Careers Organisation
South African Chamber of Business
South African Communist Party
South African Democratic Teachers' Union
South African Federated Chamber of Industries
Steel and Engineering Industries Federation of South Africa
Terreblanche, S
Textile and Clothing Industry
Textile Federation
The Centre for Conflict Resolution
The Land and Agricultural Bank
The Tongaat-Hulett Group Ltd
Toyota S A
Transnet

	Tucker, R S K
	Tyacke, E and Lowry, D
	Van Niekerk, P
	Van Zyl, J
	Wiehahn, N
	Zimema, P M
Children and Youth	Human Rights Committee
	Junior Rapportryerbeweging
	Justice Goldstone, R J - several submissions
	KwaZulu-Natal Programme for Survivors of Violence
	National Children and Violence Trust
	National Children's Rights Committee
	Ndlozi, G
	Nkomo, M N
	Reynolds, P and Dawes, A
	Smith, T S J
Health	American Association for the Advancement of Science
	Amnesty International
	Baragwanath Hospital
	Centre for Psychosocial and Traumatic Stress
	Citizens' Commission on Human Rights South Africa
	Democratic Nursing Organisation of South Africa
	Dental Association of South Africa
	Department of Health
	Department of Psychiatry, Tygerberg Hospital
	Fanner, M
	Greater Johannesburg Welfare, Social Service and Development Forum
	Groote Schuur Hospital Region
	Independent Mediation Service of South Africa
	Independent Medico-Legal Unit:
	Main submission
	Maller, R
	Colvin, M
	Reid, S and Giddy, J
	Lasich, A J
	Akoojee, S B
	Nel, J P
	Organisation for Appropriate Social Services for South Africa

Health Psychology Unit, Centre for Peace Action, University of South Africa
Holomisa, B
Islamic Medical Association South Africa
Jeppe, C
Johannesburg Child Psychotherapy Group
Johannesburg Welfare Society
Khulumani Support Group
Kistnasamy, M B
Klatzow, D J
Lasich, A J
Medical Research Council
Medical Association of South Africa
Medical University of South Africa
Mohare, D E
National Institute of Mental Health, Rockville, Maryland, USA
National Traditional Healers Association of Southern Africa
Organisation For Appropriate Social Services for South Africa
Pillay, S R
Professional Board for Occupational Therapy
Progressive Doctors' Group
Psychology Association of South Africa
Rataemane, S
Respiratory Clinic
Society of Psychiatrists of South Africa
Soobiah, R
South African Academy of Family Practice/Primary Care
South African Council for the Aged
South African Medical and Dental Council
South African Medical and Dental Practitioners Association
South African Medical Service
South African Medical Students Association
South African Nursing Council
South African Pharmacy Council
University of Cape Town: Dept of Community Health
University of Cape Town: Dept of Medicine
University of Cape Town: Dept of Pharmacology
University of Cape Town: Dept of Primary Health Care
University of Natal: Medical School
University of Pretoria
University of the Witwatersrand
University of the Western Cape - Centre for Student Counselling

	Van Speyk, V
	Vegetarian Society of South Africa
	Vitus, L
	Witwatersrand Mental Health Society
	World Federation for Mental Health
Individuals	Bothma, K
	Chaskalson, A; Langa, P; Mahomed, I; Corbett, M M; Van Heerden, H J O
	Coetzee, L F
	Grundlingh, L and Smit, R
	Hain, P
	Hendrickse, M A
	Joubert, A J M
	Kitson, D
	Kleyn, J J G C
	Lategan, B
	Madlala-Routledge, N
	Mokhele, T
	Pepinsky, H E
	Skoulariki, P
	Southall, R and Wood, G
	Van Hees, S
	Zeiss, R K R
Law and H Rights	Ackermann, L W H
	Addison, G
	Aitchison, J J W
	Amnesty International
	Anonymous - Afrikaans letter from a mother re: conscript
	Anonymous - re: Conscripts
	Anti-Apartheid Movement
	Association of Law Societies of the RSA
	Black Lawyers Association
	Botha, C
	Bozalek, L J
	British Rights Watch
	Cachalia, F
	Cameron, E
	Campus Law Clinic
	Centre for the Study of Violence and Reconciliation
	Chatsworth Child and Family Welfare Society
	Coetzee-Andrew, M
	Commission for Gender Equality; South African Human Rights Commission and South African NGO Coalition

Community Law Centre; Development Action Group; Legal Resources Centre; Black Sash; NGO National Coalition; National Land Committee; National Literacy Co-operative; Peoples' Dialogue; Urban Sector Network
Corbett, M M
CURAMUS: Botha, J H
Deegan, J
D'Oliveira, J A v S
De Ridder, T
De Vries, A P
Department of Justice
Die Afrikanerbond
Du Plooy, N
Dyzenhaus, David
Eloff, C F
Expatriates of Hambanathi
Forsyth-Winberg, T D
Friedman, G
General Council of the Bar of South Africa
Goldblatt, B and Meintjes, S
Goldstein, E L
Goldstone, R J
Govender, K
Graaf, M
Harms, L T C
Hart, O D
Hattingh, J
Hemson, D
Human Rights Committee
Human Rights Watch (South Africa Desk)
International Association of Democratic Lawyers
Jana, P
Joffe, M M
Joubert, C P
Jurgens, J W
KAIROS
Keys, Liza
Khumalo, J A M
Kriek, J J
Laka
Land and Agriculture Policy Centre
Langa, P N

Langeveld, L J
Ledgerwood, T
Legal Resources Centre
Lichtenberg, E K W
Liebenberg, I
Lowenstein International Human Rights Law Clinic of Yale Law School, Lawyers Committee for Human Rights and others
Magistrates' Commission
McBride, P and Ekambaram, S
McNally, T P
Melamet, D A
Minnaar, A
Moll, P G
Mtetwa, C J
Nathan, L
National Association of Democratic Lawyers
National Association of Independent Lawyers
National Association of Law Societies in South Africa
National Literacy Co-operation and other educational stakeholders
National Police and Public Civil Rights Union
Nel, C D H O
Netherlands Institute for Southern Africa
Network of Independent Monitors, Port Shepstone
Olivier, Pierre J J
Omar, A M - Minister of Justice
Practical Ministries
Rasefate, R E
Rautenbach, E D
Ravele, F H
Richard, A
Roberts, L J
Rossouw, D J
Sandager, A
Sarkin, J and Varney, H
Satchwell, K
Schwartzman, I
Selikowitz, S
Simelane, B Q P
Skosana, J B
Smalberger, J W; Howie, C T; Marais, R M; Scott, D G
Society of University Teachers of Law
Sole, S

	South African Council for Town and Regional Planners
	South African Medical Services Care for the Disabled
	South African National Council for Child and Family Welfare
	South African Police Service
	South African Prisoners' Organisation for Human Rights
	South African Veterans Association: Tucker, P and Van Niekerk, M
	Steele, R
	Steiner, C
	Torr, D
	Travers, G N
	Tshishonga, M M
	Tswana Renaissance Movement
	University of Potchefstroom
	University of the Witwatersrand
	University of Venda
	Urban Monitoring and Awareness Committee
	Van Zyl, D H
	Von Lieres und Wilkau, K P C O
	White, C S
	Wright, G F
Media	Africa Muslim Party
	African National Congress
	Alternative Media in the Cape: Badat, S; Fisher, R; Issel, J; Jackson, D; Jaffer, M; Patel, L; Seria, R and Williams, M
	Barker, M
	Bekker, Jo-Ann
	Bird, E and Garda, Z
	Bothma, P
	Broadcast Monitoring Project
	Bussiek, H and C
	De Beer, A S
	Dickson, P J
	Du Plessis, T
	Du Preez, M
	Etherington, G
	Evans, G
	Forbes, D
	Forum of Black Journalists

Freedom of Expression Institute:
Main Submission
Kable, J
Martin, K
Moorhead, K
Naum, J
Nix, J
Gardiner, William
Gerber, A
Hancock, R S
Harris, K
Institute for Democratic Alternatives in South Africa
Jacobs, S
Jaffer, Z
Khathide, B
Killeen, P S
Klaaste, A
Kramer, P S
Kruger, F and Harris, L
Loewe, M
Maluleke, E
Marincowitz, A
Mathiane, N
Matisonn, J
Mayet, Z
McMillan, J O
McPherson, J L
Media Institute of Southern Africa
Media Monitoring Project
Media Workers' Association of South Africa
Mokwena, L
Moyle, D
Muller, K M
Nasionale Pers:
Adams, S
Adema, S
Alfonso, T
Bezuidenhout, C N
Boezak, E
Booyens, J M
Botha, A
Botha, L

Bothma, J P
Botma, G J
Brynard, K
Burger, A
Caldecott, R
Church, R J
Claassen, G
Coetzee, A
Coetzee, C
Coetzee, S
Cornelissen, A S
De Beer, B
De Beer, E
De Lange, L
De Meyer, J
De Waal, E
De Waal, E J
Du Preez, L
Els, J
Engelbrecht, T
Erasmus, E
Eybers, J
Fillies, A
Fourie, C
Fourie, R
Gouws, A
Grobler, M
Hudson, M
Keiser, G
May, J
Olivier, V
Potgieter, De Wet
Pretorius, W
Prinsloo, A
Rossouw, A
Schafer, M
Slabber, C
Swartz, M
Van der Merwe, L
Van der Stad, M
Van Rooyen, A
Van Wyk, M
Waldner, M

	Nuttal, J
	Orpen, B
	Pakendorf, H
	Patten, J
	Pogrund, B
	Pretorius, J
	Procter, J
	Qwelane, D J
	Rogers, P M
	Scholtz, L
	Smith, M
	South African Communist Party
	South African National Defence Force
	South African Union of Journalists
	Sparks, A
	Stanbridge, R
	Steward, A
	Subramoney, M
	Terreblanche, S
	Times Media Ltd
	Turner, N
	Van Deventer, J H
	Van Druten, R
	Viljoen, C
	Viviers, J C
	Watts, R
	Weekly Mail and Guardian
	Will, R G
	Woods, D
Political Parties	African Christian Democratic Party
	African National Congress
	Democratic Party
	Inkatha Freedom Party
	National Party
	Pan Africanist Congress
	United Democratic Front
	Vryheidsfront
Religion	Apostolic Faith Mission of South Africa
	Baptist Convention of South Africa
	Baptist Union of South Africa
	Belydendekring van Nederduitse Gereformeerde Kerke

Catholic Church
Church of England in South Africa
Church of the Province of Southern Africa
Dharma Centre
Dutch Reformed Church, Stellenbosch Circuit
Dutch Reformed Church, Western and Southern Cape
Dutch Reformed Church: Swanepoel, F
Evangelical Alliance of South Africa
GESHER (Jewish Movement for Social Action)
Ibandla Lama Nazareth
Institute for Contextual Theory
International Federation of Christian Churches
Jamiatul Ulama, Transvaal: Bham, E I
Jewish Religious Community
Mathews, C
Methodist Church of Southern Africa
Moravian Church in South Africa
Morgan, L
Muslim Judicial Council
Muslim Youth Movement: Nisaar Dawood
National Spiritual Assembly of Baha'is
Nuttall, M
Old Apostolic Church
Potchefstroomse Universiteit vir Christelike Hoër Onderwys
Presbyterian Church of Southern Africa
Ramakrishna Institute of Spirituality and Hinduism
Reformed Presbyterian Church of South Africa
Research Institute on Christianity in South Africa
South African Council of Churches
South African Council of Churches: Tema, E M
South African Hindu Maha Sabha
Sundberg, L
United Congregational Church of Southern Africa
United Methodist Church of South Africa: Nkosinathi Madikizela
Uniting Reformed Church in Southern Africa
Uniting Reformed Church in Southern Africa – Messina Congregation
World Conference on Religion and Peace - South African Chapter
Zion Christian Church

Institutional Hearing: Business and Labour

■ INTRODUCTION

- 1 At the heart of the business and labour hearings lay the complex power relations of apartheid, the legacy of which continues to afflict the post-apartheid society. These include the consequences of job reservation, influx control, wages, unequal access to resources, migrant labour and the hostel system. Adjacent to these historic developments were industrial unrest, strikes and the struggle for the right to organise trade unions.
- 2 The hearings illuminated the widely divergent perspectives of different sectors of the economy. Sharp differences emerged over the role business played or failed to play in the apartheid years. Questions were raised as to whether business had been involved in the violation of human rights, how business related to the state and whether or not business benefited from apartheid. In the process, the very premise of business as a homogeneous entity was questioned.
- 3 Differences also emerged between businesses in different sectors of the economy: between businesses of different sizes, between predominantly white-led business and predominantly black-led business organisations and, most dramatically, between representatives of employers and trade unions.
- 4 While the Commission had called for evidence relating to the period 1960 to 1994, the vast bulk of the evidence led at the hearing dated from the late 1970s onwards. This was to be expected, given that many of the individuals involved were not active in the 1960s.
- 5 Only the white Mineworkers' Union and the South African Agricultural Union refused to participate. A few (most notably the National Council of Trade Unions or NACTU) failed to provide their promised submissions. Others did not respond to the invitation. Most notable amongst these were the multinational oil corporations (which were the largest foreign investors in South Africa) and predominantly white

labour organisations, such as the Typographical Union, the Public Servants Association and the United Workers Union of South Africa.

■ CULPABILITY, COLLABORATION AND INVOLVEMENT

- 6 From amongst the various different perceptions of the relationship between business and apartheid, two dominant positions emerged at the hearing. One view, which sees apartheid as part of a system of racial-capitalism, held that apartheid was beneficial for (white) business because it was an integral part of a system premised on the exploitation of black workers and the destruction of black entrepreneurial activity. According to this argument, business as a whole benefited from the system, although some sections of the business community (most notably Afrikaner capital, the mining houses and the armaments industry) benefited more than others did. This position is most clearly articulated in submissions by the African National Congress (ANC), the South African Communist Party (SACP), the Congress of South African Trade Unions (COSATU), Professor Sampie Terreblanche of the University of Stellenbosch and the Black Management Forum (BMF).
- 7 The other position, argued mainly by business, claims that apartheid raised the costs of doing business, eroded South Africa's skill base and undermined long-term productivity and growth. In this view, the impact of apartheid was to harm the economy. This argument was most clearly discernible in submissions from:
 - a business organisations such as the Steel and Engineering Industries Federation of South Africa (SEIFSA), the South African Chamber of Business (SACOB), the Afrikaner Handelsinstituut (AHI), the Council of South African Banks (COSAB), the Textile Federation and the Johannesburg Chamber of Commerce and Industry;
 - b specific companies and corporations such as South African Breweries (SAB), the Anglo American Corporation, Old Mutual and Tongaat-Hulett;
 - c corporate executives such as Mike Rosholt of Barlow Rand and Anton Rupert of Rembrandt International.

- 8 These opposing arguments mirror a long-standing debate over the relationship between apartheid and capitalism.¹ What was of relevance to the task facing the Commission was that these contrasting accounts imply different notions of accountability. If, for example, one assumes that apartheid placed obstacles in the path of profitability, then business as a whole is cast more as a victim of the system than as a partner or collaborator. According to this construct, the essential question to be asked of business is why it did not do more to hasten the demise of apartheid - both through pressure on the state and through progressive actions at company or community levels. In other words, why did business not protest more loudly? Why did it not support the demands of black workers for wage increases and resist migratory labour practices?
- 9 Alternatively, the analysis of the ANC, COSATU and the SACP seems to imply that the involvement of business in the racial capitalism system of apartheid was such, and the benefits so great, that it would not have been in its interest to take issue with apartheid.
- 10 These questions are typically answered in two ways. The predominant approach is to point to instances where business objected to apartheid policies and in other ways promoted political change, and to highlight its contributions through social responsibility investments, its support for the Urban Foundation, the Small Business Development Corporation and various non-governmental organisations. The other approach is to point out that, by creating jobs and generating wealth, business improved living standards and created the conditions for successful political transition.
- 11 In addressing the question of business participation in human rights violations, most business submissions took the view that such abuses required active, deliberate participation by individuals. Thus, Old Mutual stated in its opening paragraph that:

In principle, the mandate of the Commission which focuses on gross violations of human rights would almost certainly exclude Old Mutual from having to make any submission.

- 12 This view was echoed in other submissions.

¹ See Posel, D. (1983). 'Rethinking the Race-Class Debate in South African Historiography', in *Social Dynamics*, vol. 9, no. 1; Saunders, C. (1988); *The Making of the South African Past: Major Historians on Race and Class*. David Philip, Cape Town; and Nattrass, N. (1991). 'Controversies about Capitalism and Apartheid in South Africa: An Economic Perspective', in *Journal of Southern African Studies*, vol. 17, no. 4 for an overview of this debate.

13 As far as the business community was concerned, its purpose in participating in the Commission was to promote understanding of the role of business under apartheid and to explore areas where businesses failed to press for change – both at a political and at an organisational level. Failure to act quickly or adequately on the political front was regarded as an error of omission. Failure to adjust employment practices was likewise regarded as regrettable, but not amounting to a gross human rights violation.

14 Tongaat-Hulett expresses it thus:

On occasions, there may have been isolated incidents of 'ill treatment' of employees by individual managers, as was unfortunately true of many institutions and business in South Africa over the past forty years. In certain cases, too, management may have been guilty of 'turning a blind eye', for example, to treatment meted out by supervisors to lower-graded (mainly black) workers. This may have been done under the implicit assumption of most whites during the times that the level of human rights that might be enjoyed by different groups was racially differentiated. Combined with possible implicit class prejudice, this may have resulted in certain forms of ill treatment of workers (for example through separate facilities, job reservation and so forth) - not gross violations of human rights as defined by the Commission - but ill treatment all the same.

15 In contrast, the BMF regards precisely such forms of ill treatment as human rights violations:

The human rights violations by business are seen as those policies, practices and conventions which denied black people the full utilisation of their potential, resulting in deprivation, poverty and poor quality of life, and which attacked and threatened to injure their self-respect, dignity and well-being. Certain of these violations were open abuses, whilst some were indirect; yet others buttressed those carried out at a socio-political level.

16 In brief, the white business perspective sees apartheid as a set of politically inspired, economically irrational policies that were imposed on (and undermined) the economy. Those critical of business during the period under review by the Commission, on the other hand, emphasise the inherent link between apartheid and capitalism – refusing to allow for any sharp analytical distinction between the economic and political spheres. As the ANC puts it:

Apartheid was more than a programme of one political party. It was a system of racial minority rule that was both rooted in and sustained by white minority socio-economic privilege at the expense of the historically oppressed black majority. Apartheid was associated with a highly unequal distribution of income, wealth and opportunity that largely corresponded to the racial structure of society.

It is our contention that the historically privileged business community as a whole must accept and acknowledge that its current position in the economy, its wealth, power and access to high income and status positions are the product, in part at least, of discrimination and oppression directed against the black majority. While some of the important business organisations and groups opposed some of the laws introduced by successive apartheid governments, a number of core discriminatory laws were both actively sought and tolerated by business.

Historically privileged business as a whole must, therefore, accept a degree of co-responsibility for its role in sustaining the apartheid system of discrimination and oppression over many years.

17 The COSATU submission went further:

We remain of the view that apartheid, with its form of institutionalised racism, masked its real content and substance – the perpetuation of a super-exploitative cheap labour system. We all know that the primary victims of this system were the black working class and the primary beneficiaries the white ruling elite.

18 The SACP draws out the implications of this for the business argument:

The idea that the private sector's chief sin ... was that it failed to 'speak out against a system that was against economic logic' is spurious. Capitalism in South Africa was built and sustained precisely on the basis of the systematic racial oppression of the majority of our people.

In presenting the apartheid political economy as an integrated and coherent system of racial capitalism, the struggle against capitalist oppression is twinned with that for democratisation. Resisting the growth of black trade unionism, and calling in the police during strikes, is thus seen as evidence of collaboration with the apartheid system against democratisation.

- 19 The link between trade union struggles and the democratic movement is clearly discernible in the following excerpt from the ANC's submission:

At decisive moments in the re-emergence of the democratic movement, business' initial reaction was invariably one of opposition, victimisation of activists and union officials, and recourse to the regime's security forces. The first reaction to a strike or attempt by unions to organise workers was all too often to call on the police. Many violations of human rights occurred as a consequence.

Given the major role played by the independent black trade union movement in fighting apartheid, the struggle for trade union rights and democracy were often indistinguishable. The overlap was not exact, while finding coherence to the extent that both the refusal to recognise trade unions on the grounds of race and the denial of franchise both constitute human rights violations. The struggle for trade union rights, for better working conditions and for democracy, in turn, led to a host of specific gross human rights violations that are the direct concern of the Commission.

It was certainly the perception of most black workers that big business was in bed with the government. The role that business, either directly or indirectly, played in shaping apartheid policies, collaborating with agents of the state and benefiting from the system, implies a level of moral culpability which simply cannot be ignored.

- 20 Evidence of different levels of collaboration emerged in the Commission's hearings on business and labour. On the one level, business is charged with direct collaboration (most notably with the security establishment). On the other, business is charged with implicitly collaborating with the state by doing business with it, paying taxes and promoting economic growth. Professor Sampie Terreblanche argues that:

Business should acknowledge explicitly, and without reservation, that the power structures underpinning white supremacy and racial capitalism for 100 years were of such a nature that whites have been undeservedly enriched and people other than whites undeservedly impoverished.

These forms of collaboration create and promote a context that leads to the systematic execution of gross human rights violations. It contributes to the emergence of an economic and political structure – a culture and a system which gives rise to and condones certain patterns of behaviour.

21 The COSATU submission argues that:

Indeed, the historical record does not support business claims of non-collaboration. A vast body of evidence points to a central role for business interests in the elaboration, adoption, implementation and modification of apartheid policies throughout its dismal history. The South African Police and Defence Force were armed and equipped by big business. Apartheid's jails were constructed by big business, as were the buildings housing the vast apartheid bureaucracy. Apartheid's labour laws, pass laws, forced removals and cheap labour system were all to the advantage of the business community.

22 Major Craig Williamson (a former security police spy) expressed a similar understanding of collaboration by pointing to systemic links between the economy, civil society and apartheid:

Our weapons, ammunition, uniforms, vehicles, radios and other equipment were all developed and provided by industry. Our finances and banking were done by bankers who even gave us covert credit cards for covert operations. Our chaplains prayed for our victory and our universities educated us in war. Our propaganda was carried by the media and our political masters were voted back into power time after time with ever increasing majorities.²

First order involvement

23 To the extent that business played a central role in helping to design and implement apartheid policies, it must be held accountable. This applies particularly to the mining industry which, for this reason, is dealt with in some detail below. Direct involvement with the state in the formulation of oppressive policies or practices that resulted in low labour costs (or otherwise boosted profits) can be described as first-order involvement. This is clearly of a different moral order to simply benefiting from such policies. Businesses that were involved in this way must be held responsible and accountable for the suffering that resulted. Furthermore, to the extent that subsequent capital accumulation was boosted beyond that which would have occurred in the absence of such policies, the moral basis of such wealth must be questioned – a matter that is dealt with in the recommendations.

24 Other forms of involvement are more difficult to deal with because the argument shifts from accusing business of active design to accusing it of profiting from the system.

² In a memorandum submitted to the Commission at the Armed Forces hearing in Cape Town on 9 October 1997.

- 25 One could adopt a stance that argues that any business operating in South Africa was tainted by apartheid, and that the intentions of individual businesses are irrelevant to the argument. The Apartheid Debt Co-ordinating Committee makes such a case with regard to loans:

A large number of inter-bank loans, for instance, had no direct connection with apartheid. Yet, the foreign exchange given for a seemingly innocuous purpose – ranging from the development of ESKOM [Electricity Supply Commission] to the financing of a domestic home – was recycled as part of apartheid’s sanctions-busting strategy. Similarly, some foreign loans were used for purposes of international trade and, in this respect, were no different from those regularly found throughout the world. Yet, even the seemingly most pristine of these trade loans were tainted by apartheid. The simple fact of trade with South Africa inescapably meant helping to sustain and reproduce the structures, practices and lifestyles normalised by apartheid. No loan could avoid this institutional contamination.

Second order involvement

- 26 However, a distinction needs to be made between those businesses that made their money by engaging directly in activities that promoted state repression and those whose business dealings could not have been reasonably expected to contribute directly or subsequently to repression. Businesses that provided armoured vehicles to the police during the mid-1980s would fall into the former category – so-called second-order involvement – whereas those building houses for state employees would need to be viewed differently.
- 27 As is the case with first-order involvement, those who made their money through second-order involvement clearly have more to answer for than did those who made their money in other business activities. The argument is that, as entrepreneurs, they could have chosen not to engage in such business – allocating their capital and energies elsewhere.
- 28 Second-order involvement hinges to some extent on people *knowing* that their products or services would be used for morally unacceptable purposes. Consider the example provided by Major Williamson – that banks provided the police with covert credit cards. A bank that provides a covert credit card to the police to help them with, say, investigations into white-collar fraud, is in a different position to one which knowingly provides covert credit cards to death squads to help them lure their victims. Some covert activities are more acceptable than are others.

Covert credit cards and other banking facilities are, no doubt, still provided by banks to the police to help with their investigations of white-collar crime.

- 29 COSAB acknowledged that being a bank “inevitably” meant doing business with a variety of bodies that were an integral part of the apartheid system. All financial institutions were required to hold government and parastatal securities.

It would have been as impossible then, as it is now, to comply with the banking regulations without effectively doing business with government agencies.

- 30 So, banks were “knowingly or unknowingly” involved in providing banking services and lending to the apartheid government and its agencies. They were similarly involved in the movement of funds from overseas donors to organisations resisting apartheid.

- 31 The fact, however, that a former spy and Civil Co-operation Bureau (CCB) operative referred to the use that was made of covert credit cards cannot be ignored. The particular banker involved may not have had direct knowledge of why specific cards were being used. However, there was no obvious attempt on the part of the banking industry to investigate or stop the use being made of their facilities in an environment that was rife with gross human rights violations.

Third order involvement

- 32 Finally, one can categorise third-order involvement as ordinary business activities that benefited indirectly by virtue of operating within the racially structured context of an apartheid society. Condemning such businesses suggests that all who prospered under apartheid have something to answer for, in that they took advantage of a situation which depressed the earnings of black South Africans, whilst boosting their own. Taken to its logical conclusion, this argument would need to extend also to those businesses that bankrolled opposition parties and funded resistance movements against apartheid. Clearly not all businesses can be tarred with the same brush.

- 33 The issue of third-order involvement does, however, highlight the fact that the current distribution of wealth (which is substantially concentrated in white hands) is a product of business activity that took place under an apartheid system that favoured whites. This acts as a counterbalance to statements by business that apartheid harmed them, a reminder that white business accumulated (sometimes vast amounts of) wealth in spite of this alleged harm. It also raises the question

about the need for business as a whole to commit itself to narrowing the gap between the rich and the poor – a matter that is addressed later in this chapter.

- 34 Some of the business submissions grappled with the issue of third-order involvement by asking themselves whether, by merely doing business under apartheid, they were in some sense supporting the system. The Textile Federation, for example, pointed to its only direct link with the state, namely through government clothing contracts. Old Mutual noted that, by paying taxes and investing in government stock, it might possibly have contributed in some very indirect way.
- 35 COSAB, while expressing regret for acts of omission and commission committed by its members that contributed to the damage caused by apartheid, pointed to an intimate involvement by the banking industry in the structures of apartheid:

By the very nature of their business, banks were involved in every aspect of commerce during the apartheid years. Without them, government and the economy would have come to a standstill. But it would have been an 'all or nothing' decision. There could have been no halfway position. Either you are in the business of banking, or you are not. It does not lie in the mouth of a bank to say that it will accept the instruction of its client to pay one person but not another.

- 36 Against the above analysis, this chapter (which deals exclusively with the private sector) explores some of the moral issues raised in submissions on the role of business under apartheid.

A note on the role of parastatal organisations

- 37 Information was also provided to the Commission on the role of economic institutions such as the South African Reserve Bank (SARB) and parastatal bodies such as the Land Bank, the Development Bank of Southern Africa (DBSA), and the Electricity Supply Commission (ESKOM). This sheds light on how these institutions shaped the environment within which private business decisions were made (ESKOM, the SARB) and functioned as a financial arm of apartheid (Land Bank and the DBSA).
- 38 ESKOM, which supplies some of the world's cheapest electricity, explained how the electricity supply reflected the peculiarities of apartheid:

This often caused separation of naturally integrated networks or the creation of new networks irrespective of costs ... Black areas were often left with no electricity services ... In certain instances electrified black areas subsidised neighbouring white areas.

39 The Land Bank pointed out that government policy:

narrowed the bank's scope for granting loans and excluded the large segment of the South African population. Although not wilfully, the bank was indirectly supportive towards the prevailing inequality around land distribution and farming opportunities.

40 The DBSA made a similar argument, pointing to the way in which its operations (particularly in the homelands) were "immediately framed within an apartheid political context". The DBSA submission noted, however, that it experienced ongoing tension between its development role and the political context within which it operated. It nevertheless accepted that it was "an integral part of the system and part and parcel of the apartheid gross violation of human rights."

41 The Commission was gratified to learn of the transformation that had occurred in these organisations (most notably the Land Bank and the DBSA), paving the way for a constructive role in post-apartheid development. As these institutions are not part of the private business sector, they are discussed no further in this report.³

The agricultural sector

42 It was particularly regrettable that representatives of commercial agriculture did not participate in the hearing, despite an invitation to do so. Commercial agriculture has always been a fundamental component of business in South Africa and it is necessary to consider, if only briefly, its links with apartheid.

43 Like mining, agriculture has both shaped and been shaped by the racist structures of the political economy as it evolved both before and after 1948. Although the Commission's mandate begins only in 1960, it is clear that a proper understanding of this period requires an awareness of its historical roots. This requires recognition, at the very least, of the Land Act of 1913⁴, as modified by subsequent legislation, including that of 1936. None of this was fundamentally repealed until 1991 which means that, throughout virtually the entire period of the Commission's brief, black

³ Interested readers are referred to the individual submissions for details.

⁴ For some reflections on the Land Act of 1913, see chapter on *The Mandate*.

South Africans were prohibited from owning land in most areas of the country. Although it is certainly true that white farmers represented a spectrum of political views, it seems safe to conclude that this legislative prohibition retained the strong support of the majority of farmers throughout the apartheid years.

- 44 This means that, at the very least, representatives of commercial agriculture need to acknowledge (not least to themselves) the extent to which white farmers and their families have benefited (irrespective of their political views) from their privileged access to the land, which excluded virtually all other potential farmers.
- 45 Along with control of the land, white farmers also benefited from control over the movement of people by means of pass laws, which placed enormous power in the hands of farmers with respect to living and working conditions, wages and the lives of black workers and their families living on the farms.
- 46 Similarly, it is evident that the state's policy of forcibly resettling into the impoverished homelands hundreds of thousands of black South Africans no longer needed on the increasingly mechanised, commercial farms was done, if not at the explicit request of the agricultural sector, certainly with its implicit support. Indeed, the nature of the precise link between commercial agriculture, the apartheid state and the infamous policies of resettlement as they were experienced by millions of South Africans during the 1960s, 1970s and 1980s is one that requires recognition and acknowledgement.⁵ Likewise, many farmers took advantage of the farm prison system, which provided them with free labour and resulted in many human rights abuses.⁶
- 47 Another critical area requiring deeper reflection by white farmers relates to the extent to which they failed – either by simple omission or through active hostility – to ensure better education for the children (other than their own) living on their farms. Education of farm children has long lagged notoriously behind even that education that was available for African and coloured children, either in the former 'homelands' or in the towns. This failure to educate children in a modern economy is itself a human rights abuse, for which the commercial farming sector must take at least some of the responsibility.

5 See Platsky, L. & Walker, C. The Surplus People: Forced Removals in South Africa, Bloemfontein, 1985.

6 See chapter on *Institutional Hearings: Prisons* in this volume and, further, Carlson, Joel (1973), No Neutral Ground. New York: Thomas Y Crowell Company, 1973.

■ COSTS AND BENEFITS OF APARTHEID

- 48 To understand the relationship between business and apartheid, it is helpful to explore the ways in which apartheid policies aided or hindered business, and to outline the role that business played in influencing apartheid legislation.
- 49 Business was not a monolithic block and it can be argued that no single relationship existed between business and apartheid. It is, however, also true that overwhelming economic power resided in a few major business groupings with huge bargaining power vis-à-vis the state. This power could have been more aggressively used to promote reform. The state, on the other hand, actively repressed black business, favoured Afrikaner capital (through access to contracts, licences, subsidies and so on), while apartheid labour policies benefited industries dependent on low-cost labour (mining and agriculture).
- 50 It could also be argued that apartheid was in some ways harmful to businesses with greater skill requirements. Most of the submissions pointed out that state-business relationships differed between economic sectors, according to size of firm and along language and ethnic lines. It is necessary, therefore, to adopt a differentiated approach, at least as regards the early apartheid period.

Afrikaner business

- 51 The English business sector drew attention to the special relationship between Afrikaner business and the National Party (NP) government. Anglo-American said that NP hostility prejudiced its ability to conduct business. Its bid for Samancor, for example, was nullified on political grounds.
- 52 SAB also complained of NP bias, which prejudiced its business both in the retail and liquor sector and in the wine and spirits industries:

English-speaking business leaders often felt marginalised under apartheid, having little or no influence over government policy ... In a real sense, such businesses were also victims of the system.

- 53 The life assurer SANLAM accepted that its Afrikaans origins “could have contributed to and facilitated cordial business relationships with government, especially after the NP came to power in 1948 ...” saying that, “successful marketing implies sound relationships with decision-makers.” However, apart from having easier

access to government, SANLAM said, “it did not enjoy preferred status with the NP.” SANLAM claimed that it became the first large company to redress economic imbalances when it sold the life assurer Metropolitan Life to black investors in 1993. SANLAM also created a development fund to contribute to empowerment.

- 54 Professor Sampie Terreblanche agreed that the NP favoured Afrikaans business, for example through fishing quotas, mining and liquor concessions, government contracts and “all kinds of inside information”. In later years, however, this policy of Afrikaner favouritism was replaced with a policy of patronage towards those businesses that co-operated in the military industrial complex. In return for support, former State President PW Botha granted reforms proposed by the Wiehahn and Riekert Commissions, which allowed for significant changes to apartheid labour law and influx control. Terreblanche argues, however, that Mr Botha’s intention at all times “was to entrench and perpetuate white control”.
- 55 The ANC submission identified the “spectacular economic growth” of Afrikaner controlled companies like SANLAM and Volkskas, which were “especially favoured by the apartheid regime”. SANLAM’s assets rose from R30 million in 1948 to R3.1 billion in 1981, while companies over which it exercised effective control had assets worth R19.3 billion. The submission noted that Rembrandt (together with SANLAM and Volkskas) “were key players in the Afrikaner Broederbond” and “close confidants and advisers of political leaders of the apartheid state”.
- 56 The AHI was far more self-critical than other representative business organisations. It admitted that it had “committed major mistakes” in its support for separate development, its lack of moral and economic objections to apartheid, its insensitivity to issues involving human rights and its acceptance of the absence of a proper labour relations law. It accepted moral responsibility for this. It noted, however that:

Without in any way detracting from the AHI’s willingness to accept responsibility for such pronouncements [in support of separate development], it must be noted that support for separate development was part and parcel of the majority of the white community’s thinking at the time. The white Afrikaans churches, newspapers, cultural organisations and the wider community broadly subscribed to the notion that the separate development of South African population groups was seen as the best guarantee for overall justice and peace in the country. The AHI was part of that collective thinking. There were those who supported separate development because of the ‘separateness’, i.e. apartheid, in its crudest form. Others supported it for the promise of develop-

ment, i.e. people could develop to their full potential but as different ethnic groups in their own areas. Hence, from the idealistic to the cynical, from the intellectual to the lay person, from the courageous to the threatened, from rich to poor, from agnostic to Christian - many found something in the collective thinking of separate development they thought worthy of support.

57 COSATU expressed a similar view to that of Terreblanche, contending that, while the NP government explicitly set out to nurture Afrikaner business, its overall policy climate created the conditions for the rapid accumulation of capital by white capitalists in all sectors of the economy.

Black business

58 As outlined in the submission by the National African Federated Chambers of Commerce (NAFCOC), the apartheid state systematically undermined the black business sector. This was done by means of discriminatory legislation, the application of the Group Areas Act, the allocation of licences and in other ways.

59 Such actions not only stifled the black business sector, but also provided the space for white business to take advantage of the opportunities denied to black business. The Group Areas Act prevented black businesses from operating in white areas and vice versa. Those black business people who obtained business licenses in designated areas (for petrol stations, liquor outlets and so on) benefited in the limited sense that competitive pressures were artificially reduced by apartheid. While this provided a measure of protection for these (few) entrepreneurs, such protection was not always forthcoming. According to a submission from Indian-owned Avalon Cinemas, although they were prevented from operating in white areas, white-owned Ster Kinekor succeeded in its bid to operate in Indian Areas.

60 According to the submission by the Islamic Chamber of Commerce and Industry, there were also members of the black business community who “collaborated” with the apartheid regime, were involved in sanctions-busting and, “together with corrupt politicians in the Tricameral government were engaged in procuring business contracts land, houses etc. for their own benefit to the exclusion of those rightfully deserving of these assets”.

61 Despite such cases, it is clear that the overall impact of apartheid was to undermine black business systematically and perniciously. Furthermore, by limiting the development of black managerial expertise, the acquisition of business skills by black managers was prejudiced (see BMF submission).

The mining industry

- 62 From the early days of the Boer Republics, mining capital played a major role in shaping and driving cheap labour policies. Strategies included the following:
- a influencing legislation that forced black workers into the wage system (and managed their allocation within it);
 - b state-endorsed monopolistic recruiting practices;
 - c the capping of African wages;
 - d divisive labour practices in managing compounds;
 - e the sometimes brutal repression of black workers and trade unions.
- 63 This history has been well documented⁷ and was reflected in submissions by COSATU, the SACP and the ANC. The first-order involvement of the mining houses and the Chamber of Mines (COM) in shaping the migrant labour system is the clearest example of business working closely with the minority (white) government to create the conditions for capital accumulation based on cheap African labour. The evidence shows that, rather than relying simply on the forces of supply and demand, the mining industry harnessed the services of the state to shape labour supply conditions to their advantage. Thus, the mining industry bears a great deal of moral responsibility for the migrant labour system and its associated hardships.
- 64 It is regrettable that the Chamber of Mines made no mention in its submission of the active role they played in constructing and managing the migrant labour system.⁸ Although the foundations of this system were laid before the 1960s, the Chamber had a significant formative impact on the apartheid political economy during the period under review by the Commission. There is plenty of evidence to show that, directly due to the monopsonistic power of the Chamber of Mines (which was set up with this purpose explicitly in mind), black wages on the mines were lower – at least until the mid-1970s – than they would almost certainly otherwise have been. Similarly, the opposition of the Chamber of Mines to the unionisation of black mine workers effectively prevented the growth of trade unions for black

⁷ See for example, Johnstone, R. (1976). *Class Race and Gold*. Routledge, London; Wilson, F. (1972). *Labour in the South African Gold Mines*. Cambridge University Press, Cambridge; and Lipton, M. (1986). *Capitalism and Apartheid: 1910-86*. Wildwood House, Aldershot.

⁸ The Chamber of Mines merely observes that the system of labour migration “originated in a set of laws and practices in the late 19th and early 20th centuries”, and makes no mention of the role played by the mining industry in influencing such laws and practices.

mine workers until the beginning of the 1980s. The recognition of this first-order involvement, together with an appropriate apology, could contribute significantly to the reconciliation process.

- 65 The image of gold mining magnates accumulating vast wealth at the expense of African mine workers, whose wages stagnated in real terms until the 1970s, is a stain on the mining industry and one it needs to recognise. For most of the twentieth century, the greatest point of contact between African workers and business occurred on the mines. The shameful history of subhuman compound conditions, brutal suppression of striking workers, racist practices and meagre wages is central to understanding the origins and nature of apartheid. The failure of the Chamber of Mines to address this squarely and to grapple with its moral implications is regrettable and not constructive.
- 66 The submission by the Anglo-American Corporation was an improvement on that of the Chamber of Mines. Anglo-American accepted that it could have been a better corporate citizen. It had the honesty to note that, despite many representations by Harry Oppenheimer to government about the need for a more stable workforce, the Corporation failed to provide even the limited amount of family accommodation allowed within the bounds of the law.⁹
- 67 However, Anglo's submission was also flawed. Its most glaring failure was to sidestep the African wage issue. The submission blames "race politics" for depressing black wage levels and, like the Chamber of Mines, fails to address the active measures taken by mining magnates to ensure the continued supply of cheap migrant labour. The submission records that black wages doubled within a period of three years in the 1960s, and tripled in the early 1970s. This selective presentation of wage developments is misleading and fails to mention that real African wages on the gold mines were higher in 1915 than they were in 1970.¹⁰
- 68 It is important to recognise that, while the migrant labour system benefited the mining industry, this was not the case with regard to legislation protecting white labour. Government reaction to the 1922 'Rand Revolt' and the mining industry's support of the colour bar shows very clearly that the industry was opposed to any form of industrial action designed to raise labour costs – whether by white or black workers. The apartheid state created an environment in which white worker power was

9 The Anglo-American Corporation points out that they were allowed to provide married accommodation for 3 per cent of their African labour force, but failed to provide even this. They regard this as one of the "missed opportunities" and "acknowledge, with regret, that we did not sufficiently progress these and many other opportunities to oppose apartheid and hasten its demise".

10 See Natrass, J. (1988). *The South African Economy: Its Growth and Change* (Second edition). Oxford University Press, Cape Town, table 7.2, page 139.

enhanced by legislation (a position accepted by the mining industry). Black worker power, on the other hand, was progressively eroded – a situation that was ignored by the mining industry, which went on to suppress black labour with impunity.

- 69 This leads to the important point that apartheid had both costs and benefits for the mining industry. The relationship between the mining industry and various white minority governments was both complex and contradictory. On the one hand, the migrant labour system worked to the decided advantage of the mining industry. But, on the other, the protection of white labour significantly increased both wage and non-wage labour costs in mining. The many representations by mining magnates to government on the costs of job reservation bear testimony to this major apartheid-related thorn in the side of the industry.
- 70 Finally, it is necessary to touch on the role of health and safety on the mines. A submission by Laurie Flynn¹¹ suggested that the dismal health and safety record of South African mines, and the way in which mining companies and successive government ministers of mines suppressed knowledge about the dangers of asbestos, constituted human rights abuses. He referred to the “obdurate and well documented refusal of the mining companies in South West Africa [Namibia] and in the diamond industry in South Africa itself.” Similar themes were evident in the COSATU submission, which drew attention to the health hazards associated with mining and related industries.

Approximately 69 000 miners died in accidents in the first 93 years of this century and more than a million were seriously injured. In 1993, out of every 100 000 gold miners, 113 died in accidents, 2 000 suffered a reportable injury, 1 100 developed active tuberculosis and of these 25 died; in 1990 about 500 were identified as having silicosis.

- 71 The COSATU submission also recalled the notorious Kinross mining disaster, the largest accident in the history of gold mining in South Africa. On 15 September 1986, 177 workers were killed as the result of a polyurethane fire. The submission records the shocking way in which the mine reacted to the disaster:

The mine only publicised the accident at 15h00, although it had occurred at 09h00. Its initial reports stated that thirteen workers had died, although the mine was aware that 177 workers had died. Shortly after the disaster, the names and personal details of white miners were released by the company.

¹¹ Laurie Flynn is a journalist and author who has published works on mining houses and human rights in Southern Africa. See especially his book, *Studded with Diamonds and Paved with Gold* (London: Bloomsbury, 1992) to which he referred the Commission.

The black miners who had died were identified to the world as: "Sotho 45, Shangaan (Mozambican) 21, Pondo 20, Hlubi (Transkei) 6, Venda 1, Xhosa 29, Tswana 14, Malawi 15, Pedi 1".

- 72 Mining is, of course, an inherently dangerous occupation. However, there appears to be some evidence that profitability ranked higher than people's lives – as evidenced by the asbestos scandal and the continued use of polyurethane in mines long after the dangers had become known.¹² It is regrettable that more details were not forthcoming on health and safety issues from the Chamber of Mines or the Anglo American Corporation.

The arms industry

- 73 Various submissions drew particular attention to the armaments industry as a case where businesses made an active decision to involve themselves in what COSATU, the SACP and the Centre for Conflict Resolution¹³ describe as the "military-industrial complex". The ANC articulated it as follows:

This was no reluctant decision imposed on them by coercive apartheid legislation. Many businesses, including subsidiaries of leading corporations, became willing collaborators in the creation of the apartheid war machine, which was responsible for many deaths and violations of human rights both inside and outside the borders of our country. It was, moreover, an extremely profitable decision.

- 74 According to the Centre for Conflict Resolution:

[by providing] the material means for the maintenance and defence of apartheid elements within the business community are guilty of directly and indirectly perpetuating the political conflict and associated human rights abuses which characterised South Africa between March 1960 and May 1994.

- 75 As noted above, the armaments industry falls into the category of second-order involvement with the apartheid regime. The moral case against the armaments industry is essentially that business willingly (and for profit) involved itself in manufacturing products that it knew would be used to facilitate human rights abuses domestically and abroad.

¹² COSATU points out that the dangers of using polyurethane had been well documented since the late 1960s when the Chamber of Mines warned its members not to use the material because of the danger of fire. The material continued to be used in mines after fatal fires in 1977 and 1983, and even after the Kinross fire killed 177 miners in 1986 (COSATU submission paragraph 62).

¹³ The Centre for Conflict Resolution is based at the University of Cape Town and used to be known as the Centre for Inter-Group Studies.

- 76 The only submission by business that attempts to justify participation in the arms industry came from the Armaments Corporation of South Africa (Armcor). Armcor noted that, in carrying out its function to obtain armaments, it was “carrying out a function which is normal in all governments except that the policies of this [apartheid] government were abnormal”. The submission continues:

We do not deny that in executing its mandate, Armcor would have contributed to the military capability of the country. For most members of the South African defence family the enemy was not the people of South Africa. It was the threat posed by an external aggressor - usually a communist linked state such as Cuba or the Soviet Union.

- 77 Thus, the argument presented is that arms procurement is a normal activity of all governments for the (honourable) purposes of defence and that South African companies involved with Armcor thought that they were contributing to such defence (albeit probably mistakenly). The issue therefore boils down to one of motivation.

- 78 Is it credible to argue that those producing South Africa's arms thought that their products were going to be used to fight an external aggressor? Certainly, given the extent of government propaganda about Communism and the ‘total onslaught’, it is possible that many people did hold this opinion. However, once the army rolled into the townships in the 1980s, the scales should have fallen from the eyes of all perceptive South Africans. Unfortunately, no evidence was presented before the Commission about the mindset of arms manufacturers.

- 79 In its submission, Armcor proudly observes that its commitment to executing government policy has ensured its survival today:

[Armcor] has come to be described as a national asset by the Minister of Defence, Minister Joe Modise and by the Chair of the Joint Standing Committee of Defence, Mr Tony Yengeni.

- 80 This “national asset” now produces arms for export – a matter that is further addressed in the recommendations chapter.

Other (white) business

- 81 The relationship between apartheid and business in other sectors was complex and at times contradictory. Many businesses benefited from the tariff protection,

subsidies, cheap loans and preferential contracts provided by the state. Those industries competing against the import market benefited particularly. Those with a significant proportion of African workers benefited from restrictions on black trade union bargaining power – particularly until the early 1970s.

- 82 Industry was, however, divided over black trade union rights and wage determination. While many recognised that a higher level of African wages would boost consumer demand, no individual firm had any direct incentive to pay substantially more than the going wage for relatively unskilled (or skilled labour). To the extent that apartheid policies exercised downward pressure on African wages, all firms benefited, at least in so far as minimising costs was concerned. Some paid meagre wages in order to stay in business, as paying higher wages than the competition could threaten their existence. For others, depressed African wages simply boosted profits to very high levels.
- 83 Many foreign-owned companies probably fell into the latter category. The fact that they were able to improve wages and working conditions appreciably after being embarrassed by international campaigns to adopt the Sullivan Code (see the submission by the Anti-Apartheid Movement) suggests that they had previously enjoyed substantially high profits at the expense of poorly-paid African labour.
- 84 Some businesses went beyond accepting the benefits of being able to pay low African wages. Indeed, their use of the repressive machinery of the state to suppress striking workers puts them in another category altogether. Firms that informed on trade union officials to the security police and called in the police to disperse striking workers clearly have a great deal to answer for. Those which took advantage of apartheid norms and practices to humiliate their workers with racism (see the submission by the BMF) and to engage in unfair labour practices also need to recognise that they were part of the problem of apartheid - and not simply subject to its laws. While some submissions from business (such as that of Tongaat-Hulett) acknowledged this role, most did not.
- 85 Several businesses argued, on the other hand, that apartheid policies also imposed substantial costs on firms. Chief amongst these were:
- a job reservation for white workers (which was a particular problem for the building industry)¹⁴;

¹⁴ See the detailed submission by the Building Industries Federation of South Africa. Note, however, that job reservation was primarily in response to pressure from white trade unions.

- b the Physical Planning Act (which restricted the employment of African workers in certain areas);
 - c the Reservation of Separate Amenities Act;
 - d the Bantu Education Act;
 - e the Group Areas Act.¹⁵
- 86 Firms that required greater inputs of skilled labour were harmed by the politically enhanced power of white trade unions and by limitations on the skills-development and occupational mobility of African workers.
- 87 Business organisations argued that they made representations and protested to government about the impact of apartheid on business (see submissions by SEIFSA, SACOB and the Johannesburg Chamber of Commerce and Industry). These protests tended, however, to relate to specific policies (such as the colour bar, Bantu education and the Physical Planning Act) rather than broader political concerns. In other words, they protested against aspects that disadvantaged business. Before the 1980s, most criticisms were voiced at times of skilled labour shortages. Major business organisations also protested during incidents of social and political unrest, most notably after the Sharpsville massacre (1960), the Durban strikes (1973) and the Soweto uprising (1976).
- 88 But, as the submission from SAB points out, the responses of business were not without their contradictions:

Although business chambers called for reform after Sharpsville, faced with a withdrawal of foreign investment in the aftermath of Sharpsville, many businesses used their financial muscle to stabilise domestic markets by buying up the shares that were being offered for sale on the stock exchange. Similarly, while some businesses called for black workers to be given trade union rights after the 1973 strikes, others resisted efforts by their employees to secure these rights, refusing to recognise black unions and, in certain cases, using the security forces to assist them in their endeavour. Furthermore, following the Soweto uprising, some businesses openly backed the government's endeavour to restore order to the country through the security and military machine.

¹⁵ See the submission by SACOB in this regard.

- 89 Some sectors of the business community supported social and political apartheid but objected to some of the economic policies. In its frank submission to the Commission, the AHI described its growing realisation of the costs of apartheid:

As the costs for business escalated from the 1970s onwards, the AHI gradually added its voice to the (predominantly English) business organisations which had been protesting against apartheid education and labour policies for some time.¹⁶ By the end of the long post-war boom, most sections of urban business were united in their calls for an urbanised African labour force with better access to skills and jobs.

Opposition by organised business to labour controls, although inspired by the desire for a more stable, settled and productive workforce was profoundly political in that it challenged one of the pillars of apartheid - i.e. the idea that black workers were merely temporary sojourners in white cities. Frustrated by the lack of government action, Harry Oppenheimer and Anton Rupert (representing English and Afrikaner capital respectively) established the Urban Foundation in 1976 to push for reform in the areas of influx control, housing, black land ownership etc. This initiative was supported by a wide range of corporations and business organisations. The achievements of the Urban Foundation are documented in various business submissions.¹⁷

Pressure from business to re-examine its policies towards black labour and urbanisation almost certainly contributed to the subsequent reforms. As a result of the Wiehahn Commission, black trade unions were incorporated into the system of collective bargaining. This unleashed the power of black trade unions (which had been growing since the mid-1970s) and contributed significantly to the subsequent economic and political transformation. Reforms stemming from the Riekert Commission loosened some of the restrictions on labour allocation. This started a process which culminated in the lifting of influx control.

- 90 The BMF, on the other hand, argued that business “failed to challenge” the white unions and the government in their efforts to prevent black people from entering the trades. Racist corporate culture, it said, is still the main impediment to the success of affirmative action. Business encouraged and benefited from the homelands policy and decentralisation, “which created circumstances of exploitation”. Moreover, the failure of business to allow black people into senior

¹⁶ See the SACOB submission for a review of this history of protest.

¹⁷ The most extensive discussion of the Urban Foundation is to be found in the submission by Ann Bernstein.

positions “will prove to have been the biggest obstruction to economic growth. Under-utilisation of blacks is a greater cost than the brain drain”.

- 91 Some submissions from the white business sector highlighted its efforts to improve industrial relations and work towards a new framework that promoted black unions. SEIFSA said it:

led South Africa in respect of forward-looking industrial relations practices. We were the first major industry to eliminate race from our agreements, and the SEIFSA minimum wage has been a target of achievement for many other industries.

- 92 SEIFSA said that it had addressed the skills shortage in various ways in the past. In the 1960s, the industry looked to immigration and the training of black people. In 1972, the industry and unions agreed that blacks would be allowed to advance into higher operations. In 1978, the industry negotiated “the complete removal of all job discrimination and racially based provisions from the main agreement”. In 1982, SEIFSA negotiated a training agreement that provided a system to train workers who had missed the opportunity to become formally apprenticed. In 1993, SEIFSA and the National Union of Metalworkers’ of South Africa (NUMSA) agreed to investigate shared industry restructuring objectives.

- 93 The ANC submission recognised that “business’s attitude towards trade unions representing black workers evolved over time”, but it sought to record that during much of the apartheid period, business by and large worked in co-operation with the state to undermine and crush trade unions.

At decisive moments in the re-emergence of the democratic movement, business’s initial reaction was invariably one of opposition, victimisation of activists and union officials, and recourse to the regime’s security forces. The first reaction to a strike or attempt by unions to organise workers, was all too often to call on the police. Many violations of human rights occurred as a consequence.

- 94 The submission added that the trade unions survived because of the commitment and organisation of thousands of workers, despite the suffering they endured as a consequence. It was because of these efforts that the union movement grew to be a force that business could no longer repress or ignore.¹⁸
- 95 COSATU argued that, from 1973, union growth was characterised by “fierce battles” over these rights.

Business has always opposed the development of well-organised and militant trade union movements... This was co-ordinated with, and for all practical purposes indistinguishable from, state strategy in relation to union organisation throughout the 1970s and well into the 1980s. Although trade union organisations of African workers were never unlawful, business was not prepared to recognise them, but continued to have cordial relations with the established [racially based] white trade union movement of that time, which was committed to paternalistic or outright racist policies. Only mass pressure forced capital to change its tactics in relation to trade unions.

- 96 Old Mutual's submission on the costs and benefits of apartheid was illustrative. On the negative side, the submission pointed to the lowering of economic growth (which constrained the market for life insurance), the Bantu education system which limited the pool of quality employees and the existence of exchange controls which limited their expansion overseas. Old Mutual offered only two possible ‘positives’: their acquisition of assets from Colonial Mutual of Australia when it disinvested in 1987 and the “marketing opportunities” created by the expansion of the homeland bureaucracies. On this latter score, however, Old Mutual reserved judgement as to whether this would have resulted in a net gain or loss compared to some other (non-apartheid) scenario.
- 97 Again, not all businesses profited equally from apartheid. It is, however, difficult not to conclude that, between 1910 and 1994, government and business (despite periodic differences and conflicts between them) co-operated in the building of an economy that benefited whites. On the one hand, they promoted and maintained the structures of white power, privilege and wealth and, on the other, the structures of black (mainly African) deprivation, discrimination, exploitation and poverty. To

¹⁸ From the early 1970s, there was an attempt to revive the crushed black union movement. Strikes and worker stay aways began to increase in number. “Between 1965 and 1971,” records Steven Friedman ([Building Tomorrow Today](#), Johannesburg: Ravan 1987), “less than 23 000 African workers had struck. In the first three months of 1973, 61 000 stopped work. By the end of the year, the figure had grown to 90 000 and employers had lost 229 000 shifts – more than seven times the number lost through African strikes in the past eight years.” From cautious beginnings and despite heavy repression, the union movement grew to be a significant force by the end of the 1970s. In 1985, COSATU was formed, becoming the largest union body in the country. The National Council of Trade Unions (NACTU), heir to the black consciousness-aligned CUSA and the Azanian Council of Trade Unions (AZACTU), remained aloof and in 1986 a third union group, UWUSA, backed and funded by Inkatha was formed.

this extent, business was part of the mindset of white South Africa. This point was made in the AHI submission and granted in several other submissions, as well as in the oral evidence of several business leaders in response to questions posed to them by commissioners.

Workers

- 98 The argument put forward by sections of the business community, that they were not (directly) involved in gross human rights violations, was challenged by the trade unions and others. In this respect, the distinction made by Professor Mahmood Mamdani between “perpetrators and victims” on the one hand and “beneficiaries and victims” on the other, deserves careful attention.¹⁹
- 99 The BMF accused white business of violating human rights in specific ways. White business supported and did not oppose the location of black residential areas at “absurdly” long distances from work. “Business chose to provide hostels that kept men and women away from their families.” In addition, white business relied “quite heavily” on the police to structure relationships with black workers, be it around strikes or repatriations. Managers served as police reservists and business co-operated with security agents in providing data on and monitoring workers. “Business continued to pay taxes quietly and rejected calls of civil disobedience.”
- 100 Personnel policies, the BMF added, promoted “separate development” in job positions, wages, medical attention and pension pay-outs. Black people were denied the opportunity to practise their customs and were not, for example, allowed leave for funerals or to visit traditional healers. “This conflict between business practice and black custom caused a lot of anxiety and emotional damage.” In this respect, the BMF noted that business still uses, for example, culturally-biased psychometric tests to assess job applicants. “Blacks are made to feel unintelligent, and it further deprives them of their right to development.”
- 101 COSATU gave what it called “incontestable” examples of the everyday suffering imposed on workers. These included:
- a sexual harassment in the workplace;
 - b the implementation of pass laws “through the active policing and collaboration of management as a means of labour control and cheapening labour”;

¹⁹ Mahmood Mamdani, ‘Reconciliation without Justice’, *Southern African Review of Books*, November/December 1996.

- c preventable industrial accidents and diseases, where workers were maimed or killed “because not enough money was spent on safety and health”;
 - d starvation wages, which “translate into preventable malnutrition, disease and death, or lack of access to medical care”;
 - e denial of essential welfare and social services;
 - f creation of unemployment to protect profits;
 - g victimisation, including the assault and imprisonment of trade unionists and strikers.
- 102 COSATU noted that, despite the legal duty of employers to provide employees with healthy and safe working conditions, many “failed to take the necessary steps to protect employees from occupational accidents and diseases”.

More than 60 000 workers lost their lives in occupational accidents between 1964 and 1994... The carnage can be expressed in other ways. In 1974, for example, it was estimated that 100 000 hands, 50 000 feet and 40 000 eyes were badly injured; 31 000 men and women were permanently maimed; several hundred were injured severely enough not to be able to return to work, and 2 284 were killed.

- 103 COSATU identified five main devices used by business: the ‘colour bar’ (unequal wages, benefits and conditions of employment); segregationist labour legislation; unequal provision of education and training; and labour market regulations, such as the pass laws. Each of these was developed in the COSATU submission.
- 104 COSATU also noted that the business community never opposed the government’s clampdown on the union council. Instead, ‘total strategy’ “elaborated the ideological basis for overt collaboration between senior military officers and business leaders”. This co-operation grew out of more than their converging strategic conceptions of necessary ‘reform’. It had a direct economic base.
- 105 Business representatives disagreed. Ms Ann Bernstein, who heads the Centre for Development and Enterprise, argued (in her personal capacity) that business “is not the place to protect human rights”. Rather, the Constitution, the government and ultimately elections are the mechanisms that ensure human rights. The South

African Chamber of Business (SACOB) noted, however, that such issues had been discussed by the white business sector: “there are records of meetings at which a persistent case was made against the violation of human rights and the deleterious impact of apartheid laws.”

- 106 As mentioned earlier, Old Mutual did not believe it contributed to gross violations of human rights as a result of its employment practices, “except possibly in some very indirect way by fulfilling its obligations to government by complying with the laws, paying taxes and investing in government stock.”
- 107 By contrast, the Development Bank of Southern Africa (DBSA) accepted that, in supporting apartheid through providing development loans to homelands and by advising officials on policy, “the Bank was an integral part of the system and part and parcel of the apartheid gross violation of human rights”.
- 108 The Anti-Apartheid Movement (AAM) Archives Committee stated that, in the areas of wages, job discrimination, security and union recognition, international firms “were little different from their South African counterparts ... Investors in the system automatically develop a vested interest ... Subsidiaries were involved in disputes with non-racial unions in which they did not hesitate to invoke the law and call in the police.”
- 109 Professor Sampie Terreblanche suggested that racially-based capitalism was deliberately designed to produce white beneficiaries and black victims. He argued that:

A very high rate of economic growth was maintained in the 1950s and 1960s. During its heyday of state and racial capitalism, the racial disparity ratio between white and African incomes became much larger. While the per capita income of whites was 10,6 times higher than African per capita income in 1946/47, white income was fifteen times higher than in 1975. If ever there was a period of upward redistribution of income (mainly from Africans to Afrikaners), then it was the period of high growth in the 1950s and 1960s. Given the power structures of white supremacy and racial capitalism, it was a period of high growth with a ‘trickle-up’ effect.²⁰

- 110 Professor Francis Wilson points out that, although South Africa’s average gross national product “places it in the upper middle-income range of countries in the

²⁰ SJ Terreblanche, Submission to the Commission, 11 November 1997, p.10.

World Bank's annual tables, the depth of inequality is so great that there is widespread and acute poverty which afflicts some 40 per cent of all South Africans".²¹

111 Statistics provided by Whiteford and McGrath²² illustrate the effects of apartheid on income. From 1975 to 1991, the average growth rate declined, as did the per capita income of all population groups (except Asians) in the poorer sections of the population. The income of the poorer 60 per cent of both Africans and whites dropped by more than 35 per cent.

	Year	Bottom 40%	Next 20%	Next 20%	Next 20%
African	1975	3 048	6 790	11 894	24 780
	1991	1 784	5 004	10 741	34 243
	Change	-41,5%	-26,3%	-9,7%	38,2%
White	1975	39 167	72 469	90 901	177 194
	1991	23 594	53 721	84 937	177 134
	Change	-39,8%	-25,9%	-6,6%	0,0%
Coloured	1975	5 041	11 377	21 643	49 391
	1991	4 837	14 022	25 761	59 239
	Change	-4,0%	23,2%	19,0%	19,9%
Asian	1975	9 324	19 464	29 809	68 193
	1991	9 544	26 442	40 451	89 132
	Change	2,4%	35,8%	35,7%	30,7%

112 These deteriorating circumstances resulted in initiatives by business and government²³ aimed at enhancing capital accumulation and improving the lot of workers. This led to raised expectations in the African community – which could not be met in the declining economic situation.

■ BUSINESS IN THE 1980s

113 The 1980s was a period of reform and repression. Limited liberalisation occurred on both the political and economic fronts. Such efforts were, however, far from satisfactory and failed to stem the tide of rising protest from trade unions and anti-apartheid organisations.

²¹ Francis Wilson, Graduation Address to the Faculty of Commerce, University of Cape Town, December 1997.

²² Whiteford, A. and M. McGrath (1994), *The distribution of income in South Africa*, Pretoria: HSRC Publishers, Table 6.3

²³ This led, *inter alia*, to the Carlton and Good Hope Conferences in 1979 and 1981, designed to promote agreement on the role of the private sector in economic policy development.

- 114 Except for the boom years of 1980 and 1981 (primarily a response to the high dollar gold price), South Africa's growth rate was low or falling during the 1980s and early 1990s. Investments performed very badly, unemployment rose and capital flowed steadily out of the country. The mid-1980s were particularly bad years for the economy. Various factors account for this. Perhaps most influential was the impact of high world interest rates, international recession and the instability caused by the 'Third World' debt crisis. Like other developing countries, South Africa had to cope with adverse external shocks.
- 115 Domestic factors, however, also played a role in South Africa's economic woes. Monetary policy, for example, was unduly restrictive between 1982 and 1985. This was in part a consequence of the lifting of certain restrictions on capital outflow, which forced the South African Reserve Bank to raise interest rates to give some protection to the exchange rate. The rand was, nevertheless, allowed to depreciate against the dollar (in nominal and real terms) between 1982 and 1986.
- 116 This policy-induced recession of the early 1980s was exacerbated by political unrest (1984-7) which undermined investor confidence, encouraged capital flight and played a part in the refusal of major international banks (starting with Chase Manhattan) to roll over South Africa's debt. Consequently, the government declared a moratorium on imposed debt repayment and, in August 1985, re-imposed controls on the outflow of capital. Except for a brief respite in 1988, the economy limped along for the rest of the decade.
- 117 Business's changing attitude to apartheid cannot be ascribed solely to the economic crisis. Apart from the debt crisis and the decline in exports and investment, the fall of the Berlin Wall and the moderation of ANC economic policy after 1990 probably contributed to changing business attitudes.
- 118 Many business organisations were uncertain how to react to the economic crisis and political unrest. As SACOB put it:

The business community was caught between a recognition of the inevitability and desirability of significant political reform, and a range of developments which resulted in a great deal of instability and which were, quite simply, bad for business stakeholders.

[Their response] to this acute dilemma was, on the one hand, to try to speed up the reform process and facilitate contact between the different political interests - both within and outside of South Africa - and on the other, to fight a

rear guard action against the sanctions and disinvestment campaign, and the rising levels of violence, which threatened the economy and job creation.

- 119 Efforts to accelerate reform included further protests and representations to government, participation in consultative bodies (like the Economic Advisory Council) and visits by leading business representatives to the ANC in exile. The Consultative Business Movement (CBM), a body consisting of business people and representatives of community organisations, was formed in 1988 to work towards a non-racial democracy. The CBM actively sought alliances with popular leaders and attempted to guide business along the path of political transformation.
- 120 One of the rearguard actions by members of the business community was to become involved in the National Security Management System (NSMS) by participating in the network of Joint Management Committees (JMCs). A main function of the JMCs was to co-ordinate the work of all government departments in dealing with points of unrest. Mechanisms used ranged from police and army control to spending large amounts of money on upgrading townships. The goal was, however, essentially to prolong white domination. Business also participated in Defence Manpower Liaison Committees, whose function was to discuss military call-up needs and local security issues such as stay aways and unrest.
- 121 Charles Simkins, professor of economics at the University of the Witwatersrand, notes in his submission that:

These developments created new and unprecedented relationships between business and the government at a time when the capacity for public scrutiny was lowered. Of all the sub-periods between 1960 and 1994, this one needs the closest attention.

- 122 Unfortunately, the business submissions provided no specific details about this. Nevertheless, a few comments are in order. Where participation by business in the JMCs resulted in, or facilitated, subsequent human rights abuses by the security establishment, there is a clear case to answer. Where such participation resulted in the channelling of resources to townships, the moral issues are more opaque. While JMC-facilitated development in townships was certainly motivated by counter-revolutionary aims, there is an important difference between counter-revolutionary strategies based on providing infrastructure to people, and strategies based on torture and repression. Again, not all businesses played the same role in the process.

- 123 A different kind of rearguard action concerned business's opposition to sanctions. In one respect, opposition to sanctions was self-serving; to the extent that sanctions reduced growth, most businesses suffered accordingly. However, opposition to sanctions also stemmed from a belief by some businesses that economic growth rather than the intensification of poverty promotes democracy. This view is evident in Mike Rosholt's submission:

Barlow Rand was, unsurprisingly, opposed to sanctions and I state this quite openly. This was because in our view, the critical delivery of a better quality of life and jobs for the disadvantaged depended to a very large extent on economic growth, which obviously would have been detrimentally affected by sanctions, among other things.²⁴

■ COULD BUSINESS HAVE DONE MORE?

- 124 Before dealing with this question in a more general way, attention needs to be given to two specific concerns of the critics of business – the support it gave to 'total strategy' and the role specifically of multinational corporations in undermining international sanctions.

Total strategy

- 125 The ANC submission drew attention to the way in which private business was increasingly drawn into the militarisation of South African society under the tutelage of the former state. The Carlton Conference in 1979 introduced a new form of partnership between government and business and was seen as the beginning of a 'new era'. This is illustrated by the fact that business people were members of the ARMSCOR board and by widespread business participation in defence contracts.
- 126 Hundreds and probably thousands of South African private sector companies made the decision to collaborate actively with the government's war machine. This was no reluctant decision imposed on them by coercive apartheid legislation. Many businesses, including subsidiaries of leading corporations, became willing collaborators in the creation of this war machine, which was responsible for many deaths and violations of human rights, both inside and outside the borders of our country. In addition, a variety of businesses collaborated with the state in the national security management system. Business representatives, for example, joined the government's JMCs or their advisory structures, participated in defence

²⁴ A more detailed argument about the negative impact of sanctions on the economy and the motor industry in particular by the Automobile Manufacturers Employers Organisation was presented as part of the submission by the National Association of Automobile Manufacturers of South Africa.

manpower liaison committees or collaborated with the military in planning issues around conscription and military manpower.

- 127 The ANC submission also pointed to the national 'keypoints' system, whereby private industry was made responsible for protecting essential state installations in place of the state. Finally, it recalled the role of business in assisting in the development of nuclear weapons.
- 128 The AAM Archives submission reported that international firms received several of the 25 000 contracts handed out to the private sector by ARMSCOR. They were later also required to bear the cost of releasing white employees for conscription. "None refused". Although, because of international pressure, British firms withdrew as South Africa's main arms suppliers, French firms replaced them. Despite United Nations sanctions, "corporations played hide and seek in their attempts to circumvent and break the ban". Equipment was used as a major loophole, because firms could argue that it had a civilian application. South Africa depended on western governments and firms for essential nuclear expertise and technology.
- 129 South Africa also depended on five major oil companies to break the oil ban: Shell, British Petroleum (BP), Mobil, Caltex and Total. These companies also helped finance Sasol through a levy they paid to the South African government's Strategic Oil Fund.
- 130 The AAM Archives Committee noted that manufacturers argued that they were involved in constructive engagement with apartheid and raising the living standards of employees. However, "the banks had no such fig leaf. They lent directly to the apartheid government so that it could repress South African citizens, wage war against liberation movements and invade its neighbours." The inability of the government to raise much money from overseas financial markets after 1985 "was undoubtedly one of the factors behind its decision to try to reach a political settlement".

Sanctions

- 131 The failure of multinational corporations to make submissions at the hearing was greatly regretted in view of their prominent role in South Africa's economic development under apartheid. It was left to the AAM Archives Committee to explain the role of foreign firms in South Africa.

- 132 The AAM Archives Committee reported that the pattern of international investment in South Africa changed between 1960 and 1994. In the early 1960s, the involvement of the international business community was mainly through indirect investment, through trading in stocks and shares. By the late 1960s, however, direct investment by multinational corporations began to grow, bringing technological expertise into the country and giving multinational corporations a stake in maintaining the apartheid system. By 1971, over 500 British firms had South African subsidiaries. This gave international businesses a direct interest in maintaining the *status quo*.
- 133 The costs of maintaining apartheid began to mount, however, and from the late 1970s, the government and parastatal organisations began turning to the international banks for help. The AAM Archives Committee said that, after 1984, resistance grew and the costs of apartheid increased, resulting in a fall in the rand and a steep rise in inflation. It was not until then that it became less profitable for international investors to invest in South Africa: "Only then did firms begin to scale down."
- 134 Following international efforts to impose formal sanctions, overseas investors developed a new tactic of forming partnerships with South African parastatal organisations. "They reduced their profile, but relinquished any pretence of autonomy and served the economic priorities of the apartheid state." At the same time, companies were "bribed" by the government to start businesses in 'border' areas where they were offered tax breaks, Industrial Development Corporation loans and special rates for water, power and travel.
- 135 Nonetheless, in 1986/87, fifty-five of the 297 British firms in South Africa closed, and nineteen reduced their stake in the country. Over this period, 104 American firms sold their South African branches, leaving 157 United States-owned companies in South Africa. The withdrawals were, however, far from complete. Moreover, in general, they were effected in such a way as to minimise the adverse impact on the South African economy and to guarantee their parent firms a continued foothold. Their departure, said the AAM Archives Committee, was motivated by the same commercial criteria that had led them to set up in South Africa in the first place.
- 136 Foreign investment prevented governments from taking any real action against apartheid. The AAM Archives Committee concluded that:

The speed with which the apartheid edifice crumbled is the final proof of the way in which international business sustained apartheid.

In broader perspective

137 Several business submissions (most notably that of the AHI) suggested that they could have done more to fight apartheid. Mike Rosholt agreed, but pointed out in his submission that “to claim this today is to apply the perfect vision of hindsight, a privilege not available to one at the actual time”.

138 SACOB presents the argument as follows:

With the benefit of hindsight, it may be said that the enormity of the apartheid system required stronger responses from business on certain key issues ... In the ongoing debate about ‘gradualism’ versus the ‘all or nothing approach’ to get rid of apartheid, the stance of these organisations was to push the gradualism arguments to the maximum.

139 According to Professor Charles Simkins, the cautious approach to reform adopted by business leaders was in part a result of having to keep the rest of the business community on board:

As in all changing situations, one can divide the actors into three groups: those who sought to meet the challenges by innovation (the reformers), those who resisted change (the stand patters) and those who waited to see which way the wind was blowing before committing themselves (the expedient adapters) ...

The temptation facing stand patters was always to resist change by collaborating with the state in repression ... By contrast, the work of business reformers has been important in helping define the path to the present. Many attempted reforms soon fell by the wayside; others happened in a rather messy fashion; a few defined a substantially new dispensation in their field. If, from the perspective of the present, the arguments of the reformers look cautious and conservative, this is partly because they often were (though sometimes with more radical longer-term implications) not always understood. But the arguments were also often formulated cautiously in order to persuade stand patters and expedient adapters to move forward.

140 Implicit in any evaluation of the role of business under apartheid is an underlying conception of what the role of business should be in society. Two distinct points of view emerged.

141 The first was expressed in submissions from business which accepted that more could have been done by the business community to bring about change, thus implicitly accepting a moral role for business that extended beyond the conventional bounds of everyday business activity.

142 The other point of view denied that business could or should have acted from a moral standpoint. According to SANLAM:

Any notion that business could have acted as a watchdog of the government as far as human rights violations are concerned is totally unrealistic and should be dispelled. Business was unable to act in that way in the past and will not be able to do so in the future ... government is so powerful and dominant that a business organisation will seriously jeopardise its prospects of success by crossing swords with politicians.

143 While there are clear constraints imposed by political power, to say that business was incapable of crossing swords with politicians is to deny the power (and responsibility) that accompanies financial muscle and personal contacts.

144 Ann Bernstein argued that, by its very nature, business is not a moral being and hence cannot be expected to act as such.

Corporations are not institutions established for moral purposes. They are functional institutions created to perform an economic task (production of goods and services and so on). This is their primary purpose. They are not institutions designed to promote some or other form of morality in the world. Other institutions exist to fulfil these purposes. This does not of course absolve individuals within companies from moral choices, but that is a different matter.

145 She suggested that business contributed in a positive but unintended way through the impact of economic growth on social transformation:

Life is not a morality play. There are very few people who give up everything for their beliefs and ideas. Business in South Africa accommodated itself to the apartheid system. In doing so it provided jobs for millions of people, created infrastructure, unleashed democratising pressures (unintentionally) and sustained a base of economic activity that now provides a platform for economic growth in a democracy.

- 146 The former argument condemns all business people for having engaged in business under apartheid. The Bernstein argument, on the other hand, applauds them for such engagement (what others have identified as a close symbiosis between white business people and white politicians). Issues of realistic choice, differential power and responsibility (which are important when making ethical judgements) are downplayed in both arguments.
- 147 Business (not least for reasons of enlightened self-interest) is coming to recognise that morality *is* an important ingredient of viable business. Moreover, the conflict that characterised labour relations in South Africa shows that a failure by government and business to recognise the fundamental rights of workers provided the very incentive that Ms Bernstein questions, with the result that large numbers of people *did* give up “everything for their beliefs and ideas”.
- 148 The mandate of the Commission requires it to make recommendations to ensure that past violations of human rights do not recur in the future. This requires a conscious commitment to realistic moral behaviour grounded in a culture of international human rights law. It would be a sad day for the nation, faced as it is with the opportunity for renewal, if business were to dismiss social concern, business ethics and moral accountability in labour relations as being of no direct concern to itself.

■ THE WAY FORWARD

- 149 Many submissions addressed the question of what business should do to contribute to reconciliation and development in ways that are more concrete. Most business submissions pointed to the important contribution of social responsibility investment programmes, support for NGOs, improved employment equity programmes and the like. These important initiatives deserve support.
- 150 Other submissions suggested measures that are more radical. For example, the Apartheid Debt Co-ordinating Committee argued for the cancellation of all apartheid debt. In 1994, the apartheid debt stood at some R250 billion. Interest on the debt amounted to some R30 billion a year. According to a submission by the Apartheid Debt Co-ordinating Committee²⁵:

The total government debt currently stands at R300 billion. R40 billion of government's budget for this year is spent on paying interest on this debt. This makes interest payment on the debt the largest item after education. In

²⁵ Submission of the Apartheid Debt Co-ordinating Committee, 17 October 1997.

comparison, vital social services such as health received just R20 billion, social security and welfare R18 billion, housing R4 billion and water R2 billion.

Who owns the debt? Forty per cent is owned by the Public Investment Commission – a semi-government body – that is the chief lender to the government for financing civil service pensions. Fifty per cent is owned by business, commercial banks, insurers and other wealthy entities and individuals. The remaining amount is owed to the Reserve Bank and about 5 per cent is foreign debt.

- 151 In its argument for the cancellation of the debt, the Apartheid Debt Co-ordinating Committee continues:

There exists the doctrine of "odious debt" in international law. The doctrine concerns the responsibilities of successor governments in relation to the debts incurred by the former regime. As an exception, the doctrine allows successor governments to disown the debt incurred by fallen dictatorships ...

For apartheid's creditors, agreeing to the cancellation of their part of the apartheid debt would give them the opportunity to enter the process of truth and reconciliation. The cancellation of their loans would represent a recognition of their complicity with apartheid and a willingness to contribute to the reparations needed to rebuild this country.

- 152 Leaving aside the debate as to the morality of payment or non-payment, it has been suggested that cancellation of the debt could have certain adverse consequences for economic growth. Advocates for continued payment confirm the point made by the Apartheid Debt Co-ordinating Committee that a significant part of government debt is owned by domestic financial and commercial institutions. Cancelling it, they say, would erode their asset base, harm shareholders, pensioners (in cases where debt is owned by pension funds) and possibly employees. To the extent that such debt cancellation would undermine the level of confidence in government stock, it would also result in higher borrowing costs on new debt issues – or even an inability to market any debt domestically or abroad. This would severely constrain any subsequent attempts at redistribution on the part of the state. A very careful analysis of the costs and benefits of this proposal is, therefore, required.

- 153 However, given the crippling effects of the South African debt, as well as the general indebtedness of the 'third' to the 'first world', there is a strong argument

for discussion, consultation and co-operation with other countries facing similar debts that impact on their ability to deliver services to their citizens.

- 154 Professor Sampie Terreblanche has proposed a wealth tax as a means of redressing an important legacy of apartheid - South Africa's highly unequal distribution of wealth. He gives seven reasons which, to his mind, support this proposal:
- a Africans were deprived of large parts of land on which they had conducted successful traditional farming for centuries.
 - b For decades, millions of African people were paid exploitative wages in all sectors of the economy.
 - c A great variety of discriminatory legislation not only deprived Africans of the opportunity to acquire skills, but also compelled them to do dreary, unskilled and humiliating work at very low wages.
 - d The prevailing power structures deprived Africans of opportunities to 'accumulate' human capital.
 - e Heavy restrictions on the legal right of Africans to own property and conduct business deprived them of the opportunity to accumulate property and develop entrepreneurial and professional capabilities.
 - f While the prevailing power structures impoverished the greater majority of Africans during the first three-quarters of the century, the liberation struggle and the state response to it had a devastating effect on the poorer 60 per cent of the African population.
 - g African societies were impoverished and "destroyed", while the system also prevented South Africans from building a united society.
- 155 Professor Terreblanche argues that a wealth tax would contribute to reconciliation, social stability and economic growth, while providing a basis for restitution for those who have been impoverished through apartheid.
- 156 Mr Bob Tucker, executive director of the Banking Council, argued (without being mandated to do so by members of the Banking Council) that business should contribute to "reconstruction and development" rather than a reparations fund. This,

he said, should be motivated not by a “sense of guilt” but out of “enlightened self-interest”. He further appealed to individuals “on the basis of their humanity and sense of compassion (not guilt), to contribute as individuals to a reparation fund to benefit those who were direct and evident victims of the atrocities that were committed at the time.”²⁶

- 157 More recently, Mr Stephen Mulholland, a former editor of the *Financial Mail* and currently a *Business Times* columnist, has argued that each company listed on the Johannesburg stock exchange should give up 1 per cent of its market capitalisation and contribute it to a huge new fund. He suggests that the fund should be run by business and would represent a dramatic and once only contribution by corporate South Africa to redressing the past and the development of a new country. Mr Mulholland commented: “Portfolios routinely move up and down with the market by a great deal more than 1 per cent. The market would hardly notice it.” His proposal would raise R14 billion.
- 158 The virtue or otherwise of the above proposals must be left to experts in the field to assess. The extent to which voluntary responses of the kind suggested by Mr Tucker are likely to prove sufficient to address the problem facing the nation needs at least to be questioned. It may be that the Terreblanche and Tucker options are not mutually exclusive. The Mulholland proposal suggests a bold initiative by corporate South Africa. The virtue of the proposal is that it would remove some of the pressure on the state to introduce legislation or further taxation. It would also be a welcome signal from corporate South Africa that it understands and accepts its own responsibility for the past and its commitment to stability and justice in the future.
- 159 There is no doubt that business could and should play an enormously creative role in the development of new reconstruction and development programmes. Funding for this could come from business itself (as in the Mulholland proposal), from the state (as in the Terreblanche proposal), from loans or from a combination of these.
- 160 An alarming gap exists between rich and poor in South Africa. This is aggravated by the fact that wealth and poverty are very largely defined in racial terms. The perpetuation of the gap – indeed its possible widening in a pressured economic environment – is a very real threat to peace and stability. It is in the interest of the private and the public sector alike to ensure that this situation is redressed. Economic logic suggests that, while more than 60 per cent of the population remains

²⁶ Correspondence with Dr Fazel Randera, regarding the Commission’s request for suggestions concerning recommendations for the future role of business. 12 May 1998.

impoverished, there is no possibility of meaningful economic growth or national stability. If a wealth tax is not the way forward, then some other measures should be sought and implemented as a matter of urgency.

■ FINDINGS ARISING OUT OF BUSINESS SECTOR HEARINGS

The Commission finds that:

- 161 Business was central to the economy that sustained the South African state during the apartheid years. Certain businesses, especially the mining industry, were involved in helping to design and implement apartheid policies. Other businesses benefited from co-operating with the security structures of the former state. Most businesses benefited from operating in a racially structured context.
- 162 Businesses were reluctant to speak about their involvement in the former homelands. A submission by Mr Sol Kerzner and Sun International would have facilitated the work of the Commission.
- 163 The Land Bank and the Development Bank of South Africa, in particular, were directly involved in sustaining the existence of former homelands.
- 164 The denial of trade union rights to black workers constituted a violation of human rights. Actions taken against trade unions by the state, at times with the co-operation of certain businesses, frequently led to gross human rights violations.
- 165 The mining industry not only benefited from migratory labour and the payment of low wages to black employees; it also failed to give sufficient attention to the health and safety concerns of its employees.
- 166 Business failed in the hearings to take responsibility for its involvement in state security initiatives specifically designed to sustain apartheid rule. This included involvement in the National Security Management System. Several businesses, in turn, benefited directly from their involvement in the complex web that constituted the military industry.
- 167 The white agricultural industry benefited from its privileged access to land. In most instances, it failed to provide adequate facilities and services for employees and their dependants.

Institutional Hearing: The Faith Community

■ INTRODUCTION

- 1 Some of the major Christian churches gave their blessing to the system of apartheid, and many of its early proponents prided themselves in being Christians. Indeed, the system of apartheid was regarded as stemming from the mission of the church. Other churches gave the apartheid state tacit support, regarding it as a guarantor of Christian civilisation. They were the beneficiaries of apartheid, enjoying special privileges denied to other faith communities.
- 2 Religious communities also suffered under apartheid, their activities were disrupted, their leaders persecuted, their land taken away. Churches, mosques, synagogues and temples – often divided amongst themselves – spawned many of apartheid's strongest foes, motivated by values and norms coming from their particular faith traditions. They were driven by what has been called the 'dangerous memory' of resistance and the quest for freedom, often suppressed but never obliterated from their respective faiths.
- 3 As involved and implicated as they were in the past, South Africa's religious communities also represented important sites of transformation. Different interests, perspectives and world views are represented - often within the same faith tradition. Likewise local churches and similar communities contained victims, beneficiaries and perpetrators of apartheid. Reconciliation within such communities could have a leavening effect for the whole society. From them should flow a source of renewal extending to the entire South African society.
- 4 These factors served to indicate the importance of bringing faith communities into the Commission process. A further reason – grounded in the desire of many within the religious communities themselves – was to remind themselves of their obligation, testified to within their own traditions, to participate in social transformation and the national process of reconciliation.

- 5 In total, forty-one faith communities made written submissions or gave representations at the hearings. While a fairly wide spectrum of churches was represented, some important churches were missing. The Nederduitsch Hervormde Kerk did not respond to the invitation sent by the Commission. The Gereformeerde Kerk considered the invitation but decided not to participate – although four theologians from this church (dss Alwyn du Plessis, Bennie van der Walt, Amie van Wyk and Ponti Venter) made a submission in their personal capacities.
- 6 The Chief Rabbi and the Hindu Maha Sabha sent submissions and testified at the hearings, as did the Baha’i Faith. A submission was received from the Buddhist Dharma Centre. The Moulana Ibrahim Bham of the Jamiatul Ulama Transvaal testified, as did Moulana Farid Esack, formerly of the Call of Islam. The Muslim Judicial Council of Cape Town (MJC) attended. Subsequently, the Muslim Youth Movement (MYM) made a submission.

■ FAITH COMMUNITIES IN SOUTH AFRICA

- 7 The term ‘faith communities’ encompasses groups as diverse as the Baptist Union and the Jamiatul Ulama Transvaal (Ulama), the South African Council of Churches (SACC) and the African religious community, the Church of the Province of Southern Africa (Church of the Province) and the Hindu community.
- 8 Placing such a diverse assemblage together, and asking each to answer the same questions, risked overlooking differences in organisation and accountability structures. Some, such as the Baptist Union, have a strong voluntarist tradition and emphasise the local congregation and its autonomy. Others, such as the Roman Catholic Church, are much more hierarchical in character. Still others, such as the Afrikaans Reformed Churches and the African religious community, are largely associated with a cultural or ethnic group and identify organically with its activities. There are also different groups *within* each of the religious traditions. Precisely *who* was being represented was a problem that surfaced at the hearings.
- 9 While not comprehensive, the representation of religious groups and movements in submissions and at the hearings reflected a broad spectrum of religion in South Africa. They included:

African Traditional Religion

- 10 African Traditional Religion in South Africa is at a significant disadvantage when placed alongside more highly organised institutions. Often dismissed as ‘culture’

rather than religion (based on the early settler view of Africans as religious 'blank slates'), African Traditional Religion often lacks centralised and acknowledged leadership and regulatory bodies to give it identity. It is, indeed, often represented by black Christian theologians rather than traditional religions themselves. It nevertheless represents a vibrant cluster of practices that are part of the lives of many Africans, including those who attend Christian churches.

Christian churches

- 11 Although Roman Catholicism arrived in South Africa with the Portuguese explorers, Christianity in South Africa was established predominantly in Protestant churches (or denominations). The Dutch Reformed Church and the Moravians represented early settler and missionary Christianity respectively. The white Lutheran churches were established with the arrival of German and Scandinavian settlers. Groups that would coalesce into the so-called English-speaking churches date from the nineteenth century onwards. Ironically, the majority membership of these churches is black and does not use English as its first language. These include the Church of the Province (Anglicans), the Methodist Church of Southern Africa (Methodists), the Presbyterian Church of Southern Africa (Presbyterians) and the United Congregational Church of Southern Africa (United Congregationals). The Roman Catholic Church (Catholics) is usually grouped with these.

- 12 Black churches (not included in the English-speaking churches) comprise the black mission churches, historic black churches and African-initiated (or indigenous) churches. Unlike the converts of the English-speaking churches, the converts of the Afrikaans Reformed Churches, some other mission churches and certain missionary societies were formed into separate churches – always under the watchful eye of the white missionaries. The black churches within the Afrikaans Reformed church traditions are discussed below. The Scottish missionaries established the Bantu Presbyterian Church (today Reformed Presbyterian Church). The Swiss established the Tsonga Presbyterian Church (now the Evangelical Presbyterian Church) and the American Board of Missions was responsible for the emergence of the Bantu Congregational Church. The latter church went into union with the Congregational Church to form the United Congregational Church of Southern Africa in 1967 and the Reformed Presbyterian Church is planning to unite with the Presbyterian Church of South Africa, although the Evangelical Presbyterian Church is not part of that union. The origin of the American Methodist Episcopalian Church is to be found in the rejection of racism in the post-Civil War period in the United States of America and was first established in South Africa in the latter part of the nineteenth century.

- 13 Perhaps the most significant emergence of black churches came with the advent of the African Initiated Churches. The causes were the lack of black representation in the leadership of the established churches, coupled with white paternalism, class assertion and cultural hegemony. The largest of these is the Zion Christian Church, best known for its annual gathering at Moria. Also prominent (and especially strong in KwaZulu-Natal) is the Ibandla lama Nazaretha or Shembe church, which strongly reflects Zulu culture.
- 14 African Initiated Churches have, at times, been regarded as inward looking and disinterested in political participation. This is not, however, always the case. The Council of African Initiated Churches unites across a number of bodies and has been politically engaged. It is also connected to other churches through its membership of the SACC.
- 15 The Afrikaans Reformed Churches were widely identified with Afrikaner nationalism and held to be complicit in apartheid. The largest of the group is the Nederduitse Gereformeerde Kerk (Dutch Reformed Church). The others include the Nederduitsch Hervormde Kerk, the Gereformeerde Kerke and the Afrikaanse Protestantse Kerk. Of these, only the Dutch Reformed Church made representations to the Commission. Located within the Dutch Reformed Church's 'family' are three mission churches: the Nederduitse Gereformeerde Sendingkerk (Coloured), the Nederduitse Gereformeerde Kerk in Afrika (black) and the Indian Reformed Church. In 1994, the Nederduitse Gereformeerde Sendingkerk and Nederduitse Gereformeerde Kerk in Afrika amalgamated as the Uniting Reformed Church of Southern Africa (Uniting Reformed Church). Negotiations for inclusion of the white Dutch Reformed Church and the Indian Reformed Church were ongoing at the time of the hearings.
- 16 Like the Afrikaans Reformed Churches, the Apostolic Faith Mission was segregated along racial lines. A Pentecostal church, the Apostolic Faith Mission drew many of its members from the Afrikaans Reformed Churches. Pentecostal and charismatic religion in South Africa is also represented by a number of other groups, organisations and movements, including the International Fellowship of Christian Churches. Membership of these groups is growing fast, particularly (though not exclusively) in white suburbs.
- 17 Other churches with strong constituencies were also established, including Lutheran churches. Some evangelicals have remained in these churches, although there are also denominations that are explicitly conservative in doctrine and ethos. Many of these churches were represented at the hearings and in submissions - either directly or through the Evangelical Alliance of South Africa (Evangelical Alliance).

- 18 The Baptist Church has been in South Africa since the mid-nineteenth century. The two largest denominations are the Baptist Union and the Baptist Convention, which split from the Union in 1987.
- 19 The other main evangelical denomination at the hearings was the Church of England in South Africa (Church of England) which claims to be the original representative of Anglicanism in South Africa. Also notable in this camp are the Salvation Army and the Seventh Day Adventist church.
- 20 Many of the communities mentioned above are members of the SACC, including more conservative evangelical and charismatic churches, such as the Salvation Army and the International Federation of Christian Churches (which joined some five years before the Commission hearings). The Catholics joined in 1994, on the same day the Dutch Reformed Church became an observer member. Before the fall of apartheid, the SACC drew its members mainly from the English-speaking churches. Increasingly, as it was marginalised by the state and seen to identify with resistance movements (causing considerable tension with its older constituents), its membership became increasingly black.

Islam

- 21 Islam traces its origins in South Africa to the arrival of political prisoners and slaves at the Cape from the late seventeenth century. Conversion to Islam was widespread in the Cape, due to the exclusion of slaves from the Dutch church (the chief reason for which was insistence by the Dutch East India Company that Christianised slaves be manumitted). In this environment, Islam provided a political haven for slaves and 'free blacks' and provided them with basic religious rites they were denied by the church. In the early twentieth century, Indian traders who settled in the Transvaal and Natal also introduced Islam. Important class differences, expressed in theological distinctions, are rooted in these communities.
- 22 Formed in the Cape in 1945, the MJC was set up to promote unity amongst Muslims. Despite the leadership of Imam Abdullah Haron, who was killed in 1969, the MJC took an apolitical stance for many years. The emergence of the Muslim Youth Movement (MYM) of South Africa, the Pan Africanist Congress (PAC)-aligned Qibla and the United Democratic Front (UDF)-aligned Call of Islam created a stronger social and political consciousness amongst Muslims (and within the MJC). This often pitted them against the conservative Ulamas.

Judaism

23 The Jewish community in South Africa descends from immigrants of Anglo-German and Lithuanian origins who arrived at various stages during the nineteenth century. The SA Jewish Board of Deputies (formed in 1912) and the SA Zionist Federation (1898) are its two main representative bodies. Originally, members of the Jewish faith in South Africa looked to the Chief Rabbi of Britain for spiritual leadership. Eventually, in 1933, synagogues in the Transvaal federated under a chief rabbi. In 1986, Cape and Transvaal groupings that had remained fairly independent up until then amalgamated. While members of the Jewish community made their greatest contributions to South African human rights as individuals, some organisations also played a role. During the last years of apartheid, Jews for Justice and Jews for Social Justice were important voices of protest. The Geshur Movement, formed in Johannesburg in 1996, aims "to serve as a Jewish lobby speaking with one independent voice, 'to enlighten' the Jewish community in the new South Africa, and to combat Jewish racism."¹

Hinduism

24 Seventy percent of the one million South African Indians are Hindu. The first Indians came to South Africa in 1860 to work as indentured labour, mainly on sugar plantations in Natal. After the term of their indenture ended, many stayed on as farmers - despite government attempts to repatriate them in the 1920s. The so-called 'free' or 'passenger Indians' arrived towards the end of the nineteenth century and set up trade and merchant businesses. Indians in South Africa are a very diverse group. They include four major language groups with distinctive (though sometimes overlapping) worship practices, religious rites, customs and dress.

25 From the turn of the century, various Hindu communities and religious institutions came together under the banner of a national body. The Hindu Maha Sabha was formed in 1912 as a forum for discussion of the religious, cultural, educational, social and economic welfare of the Hindu community. It embraces the four main language groups, temple societies and neo-religious organisations that subscribe to the views of Hinduism.

Buddhism

26 While some Buddhists came to South Africa from India and other Indians have embraced the religion since its arrival late in the nineteenth century, most South

¹ Milton Shain, 'South Africa', *American Jewish Year Book*, 1997 Eds. David Singer and Ruth R. Seldin (New York: American Jewish Committee, 1997), 422

African Buddhists are white converts. Buddhism in South Africa does not have centralised structures, but is present in small organisations and centres. The first Buddhist society was formed in 1917 in Natal. Buddhism grew amongst whites through the work of Molly and Louis van Loon and others who travelled and learned its practices abroad. The Dharma Centre, representing the Zen tradition, was set up at Somerset West in 1984.

The Baha'i Faith

- 27 Although present in South Africa since 1911, the Baha'i Faith only began to grow in the 1950s. While committed to inclusivity, the South African Baha'i community worked to promote its black leadership. This was, as it said in its statement to the Commission, "a result of [its] great emphasis on spiritual, moral, and ethical aspects of community life". The Baha'i faith places great emphasis on offering itself as a model for reconciliation, both racial and religious.
- 28 Throughout the hearings and in submissions, faith communities identified their role in South Africa's past as 'agents' of oppression, as 'victims' of oppression, and/or as 'opponents' of oppression.

■ FAITH COMMUNITIES AS AGENTS OF OPPRESSION

- 29 In most cases, faith communities claimed to cut across divisions of race, gender, class and ethnicity. As such, they would seem *by their very existence* to have been in opposition to the policies of the apartheid state and, in pursuing their own norms and values, to have constituted a direct challenge to apartheid policies. However, contrary to their own deepest principles, many faith communities mirrored apartheid society, giving the lie to their profession of a loyalty that transcended social divisions.
- 30 While the submissions of many faith communities focused on their acts of commission and omission, some reflected an ethos where racism was tolerated. Faith communities often helped reinforce the idea that South Africa was a relatively normal society suffering from a few racial problems. Challenges to the consciences of whites were rare. Against this background, the faith communities acknowledged that, either through acts of commission, of legitimisation or of omission, they often, in addition to all else they did, also provided *de facto* support for apartheid. They either deliberately supported apartheid policies, participated (or advocated

participation by their members) in the machinery of the state, refused to oppose a state professing to be 'Christian', or simply promoted a consciousness that insulated their members against opposition.

Acts of commission and legitimisation

Active support of state policies and agents

- 31 The submissions revealed ways in which individual members of churches - even members of those churches that were outspoken against government policies - co-operated with the regime or the Security Branch. Nico Smith, a former *dominee* who was himself outspoken against apartheid, quoted from Goldhagen²: "many of these willing executioners ... were members of our congregations." Many state operatives claimed to have found positive support in Dutch Reformed Church teaching and received the church's "blessing [for] their weapons of terror".³ Responding to this, the Dutch Reformed Church confessed to having "misled" its members by presenting "apartheid as a biblical instruction". From the outset, the Dutch Reformed Church provided theological and biblical sanction for apartheid, even though some of its theologians questioned this justification. It was only in 1986 that the Dutch Reformed Church's sanction of apartheid began to be officially questioned.
- 32 The complicity of the Dutch Reformed Church in the policy of apartheid went beyond simple approval and legitimisation. The church actively promoted apartheid, not least because it served the Afrikaner interests with which it identified. The Dutch Reformed Church admitted that it "often tended to put the interests of its people above the interests of other people." It gave no examples of times or events when it did *not* put the interests of the Afrikaner community above those of others.
- 33 While only the Dutch Reformed Church spoke of giving official sanction to apartheid laws, other faith communities admitted to actions and practices that amounted to acquiescence to them. The Presbyterian Church confessed to giving "qualified support" to government in the 1960s. For example, it defended Bantustan policies in 1965 and the right of the state to suppress "unlawful subversion".

² Goldhagen, Daniel Jonah, *Hitler's Willing Executioners: Ordinary Germans and the Holocaust*, Abacus: London, 1997.

³ Commissioner Bongani Finca at the hearing.

Involvement in state structures

The Afrikaner churches, universities and other institutions acted as no more than the limbs, hands, feet, and brain of the volk and the State.⁴

- 34 Churches participated in state structures, most notably in the military chaplaincy. Chaplains were appointed from the ranks of the Afrikaans churches and the (black) Nederduitse Gereformeerde Kerk in Afrika, as well as from the ranks of the Anglican, Methodist, Presbyterian, Baptist, Apostolic Faith Mission and the Roman Catholic churches. The appointment of these chaplains was regulated by formal agreement between the state and the churches. According to a submission to the Commission by Chaplain General Johan de Witt, the Chaplains' Service, as the official channel through which the churches were able to minister to their members in the South African Defence Force (SADF), provided services in the fields of pastoral care, crisis intervention, welfare problems, operational trauma and the handling of war related stress and anxiety.
- 35 Whatever the motivation of the individual chaplains, their participation served to reinforce the acceptance of the apartheid cause in the minds of church members, and often 'justified' the demonisation of their opponents. Here again, leadership came from the Dutch Reformed Church. Dominee Neels du Plooy, a former SADF chaplain, testified at an earlier hearing⁵ that those who objected to service in the Defence Forces were described as "unbelievers". Those who served, on the other hand, were given a New Testament with a special message from South Africa's then President, PW Botha, telling them that the Bible was their "most important weapon". This message was later removed, at the request of chaplains from the English-speaking churches.
- 36 Du Plooy said that the appointment of chaplains and the involvement of the church in the military were governed by an official agreement between the state and the Dutch Reformed Church - approved by both the national synod and Parliament.⁶ Nico Smith said that many perpetrators of human rights abuses were never challenged by the Dutch Reformed Church but were tacitly or otherwise encouraged in their activities.
- 37 In its submission, the Apostolic Faith Mission church, dominated by white Afrikaners, also admitted that numerous of its members were "employed in the structures of the former government" and that many had held "top positions in the former government organisations".

4 Ponti Venter at the hearing.

5 23 July 1997

6 South African Press Association (SAPA) report 23 July 1997. (<http://www.truth.org.za/sapa9707/s970723a.htm>).

38 Other churches also confessed that their members participated in the state machinery. The Reformed Presbyterian Church, for example, admitted that some of its members took part in homeland structures. Indeed, members of most faith communities did so. The difference lay in whether or not the faith communities *themselves* gave their support for such activity. Furthermore, while it is true that non-Christians were discriminated against by the state, this changed to some degree after 1984 when Coloured and Indian people were co-opted by the Tricameral Parliament. At this stage, a number of Hindus and Muslims became complicit.

Suppression of dissidents

39 Some faith communities confessed that they did not give sufficient support to activists in their communities (see below). Others admitted to suppressing, censoring and condemning dissidents, and even to branding them as 'heretics'. The torture of Frank Chikane (then General Secretary of the SACC and a leader in the black section of the Apostolic Faith Mission) took place under the supervision of an elder in the white section (who afterwards went off to worship).

40 In addition to such acts of outright repression, there was a failure to support dissidents and activists within community ranks.

41 Even the most apparently benign activity was construed as subversive. Ponti Venter spoke at the hearing of the efforts of the Potchefstroom supporters of the National Initiative of Reconciliation to supply study space for black matriculants during the 1980s. Local churches, under the watchful eye of the Security Forces, labelled the initiative "communist-inspired," and no church in town would grant it support. The communications of members of Potchefstroom University (a prominent 'Christian National' institution) who raised their voices to question apartheid were monitored. Farid Esack spoke of the way Muslim leadership marginalised dissident voices during the struggle years. This was also the case in the Hindu community.

Internalising racism

42 Despite their claim to loyalties that transcended the state, South African churches, whether implicitly or as a matter of policy, allowed themselves to be structured along racial lines - reinforcing the separate symbolic universes in which South Africans lived. Besides the Afrikaans churches and the Apostolic Faith Mission, the Lutheran Church, too, was racially divided; its white members consistently refused to join the unity movement that was to become the Evangelical Lutheran

Church. Conservative-evangelical organisations were also affected by the climate of the country. The Student Christian Association split into separate white (SCA) and black (SCM) organisations. While the Seventh Day Adventist Church was unified at its highest level, many of its structures became segregated – into racially divided Union conferences and secondary and tertiary educational institutions - as the church began to “pattern itself after the thinking of the politicians”.

- 43 Yet even churches which retained the principle of non-racialism in their structures were not guiltless in practice. Some, such as the Salvation Army, confessed to tacit support of racism. And while the Catholics officially disavowed racial divisions, “effectively there was a black church and a white church.” This was equally true of each of the English-speaking churches - it has been suggested that Sunday morning and evening constituted the most segregated hours of the week. In those communities where black clergy were in the majority, they were insufficiently empowered as leaders within church structures. Stipends were drastically different for black and white clergy, reinforcing racial stereotypes of lifestyle differences. According to the Baptist Convention, some black Baptist ministers earned as little as R50 per month after thirty years of service to the Union.⁷

*The same contradictions that are prevalent in society are present and often reflected in the teaching and life of the church.*⁸

- 44 Discrimination was not unknown in faith communities outside of Christianity. According to Imam Rashid Omar of the Claremont Mosque, Cape Town, theological distinctions between Indian and Malay Muslims reflected ethno-class distinctions, as exemplified in the Ulamas and the Cape organisations respectively. Hence, whether legislated or not, and even in the face of their own resolutions to condemn racist government policies, many South African faith communities admitted to having mirrored the racial divisions of society.

Propagating ‘state theology’

- 45 The term ‘state theology’ is derived from *The Kairos Document* and refers to the theology that gave legitimacy to the apartheid state. The effects of state theology were to “bless injustice, canonise the will of the powerful and reduce the poor to passivity, obedience and apathy.”⁹ Few churches did not allow a distinction between black and white members at Sunday worship.

⁷ The Methodist Church and the Church of the Province also noted inequalities in stipends.

⁸ James Buys from the Uniting Reformed Church.

⁹ The Kairos Theologians, *Challenge to the Church: The Kairos Document* (Grand Rapids: Eerdmans, 1985), page 17.

- 46 The most obvious example of a faith community propagating state theology was the Dutch Reformed Church, although it never (even in its submission to the Commission) confessed to actually ‘bowing down’ to the monster that apartheid disclosed itself to be. Right wing Christian groups¹⁰ also promulgated state theology and acted as arms of the state, infiltrating especially evangelical and Pentecostal denominations. This became particularly evident in investigations into the information scandal of the late 1970s, when it was disclosed that government was funding groups such as the Christian League – the forerunner of the Gospel Defence League.
- 47 Evangelical churches were often used by government agencies to ‘neutralise dissent’. Moss Nthla referred to government-sponsored youth camps which targeted township children for evangelism. “I used to be involved in the struggle,” he recalled one young man saying, “and now I’ve received Jesus Christ as my Lord and Saviour, and I’m no longer involved”. The Apostolic Faith Mission confessed to preaching that opposition to apartheid was “communist-inspired and aimed at the downfall of Christianity.” Other churches admitted to propagating state theology indirectly by promoting the idea that it was in the interest of ‘Christian civilisation’ to support the state’s ‘total onslaught’ strategy. Claiming to speak for “eleven million evangelical Pentecostals”, Assemblies of God leaders often travelled around the world denouncing the activities of anti-apartheid Christians.¹¹

The military chaplaincy: a window into church-state relations

- 48 General Magnus Malan, former Minister of Defence and, before that, head of the SADF, was interviewed in the *Kerkbode* in early 1995. He was asked about the extent to which the church assisted him and his colleagues in times of difficult decision making in a war situation. He responded as follows:

The Christian Protestant faith is by far the strongest [of religious traditions] in the military and we received from the chaplains the correct guidance. We are all familiar with the church and the Christian-ethical principles and we would like to say thank you for preceding us in prayer through the difficult decisions that had to be taken.

Prayer always causes one to search one’s conscience ... The church has played a great role in the war situation and also in the post war situation. My family and I pray for the church.

¹⁰ This term refers to a number of groups that espoused extreme conservative politics and justified them with Christian symbols. They were strongly anti-Communist.

¹¹ The Evangelical Alliance of Southern Africa presentation at the hearing by Colin LaVoy.

- 49 His words capture the perception of the chaplaincy shared by many soldiers as well as the families and friends of those who served in the military.
- 50 This institution also helps bring into focus several of the issues already discussed which aim to identify the role of Christian churches in the abuses of the past. Many local congregation members either themselves served in the defence forces or had family members or friends who did. As such, they felt that their churches owed them pastoral care, regardless of the church's position on the war or attitude towards apartheid.
- 51 At the same time, at official, denominational levels, the chaplaincy was often an embarrassment - especially to those who claimed to be against apartheid oppression.¹² The SACC proposed an 'independent' chaplaincy service, with chaplains wearing distinctive uniforms and not receiving a salary from the state. Some churches threatened to instruct their ministers not to wear military uniforms. Some responded by supplying chaplains to the liberation movements as well. Others incurred the wrath of their members by withdrawing their chaplains altogether. Many churches, however, saw the defence forces as servants of God and the chaplaincy as an important and legitimate support. Without doubt, the Dutch Reformed Church supplied the largest number of chaplains (some 74 per cent) to the SADF. The English speaking churches provided a further 16 per cent.¹³
- 52 The military chaplaincy gave moral legitimacy to a culture characterised by the perpetration of gross human rights abuses. It served to filter out dissenting voices, to strengthen the resolve to kill and to reassure the doubting soldier that he or she was serving the purposes of God. In spite of professions of a loyalty higher than that of the state, chaplains found themselves lending succour to persons trying to kill 'enemy' soldiers who were sometimes members of their own denomination.
- 53 Chaplains ostensibly attending to the pastoral care needs of church members were under the strict control, not of the church, but of the SADF command. They were given uniforms and rank, lending further sacrality to military culture. They were expected to report to the officer commanding and to report on the conduct of those under their charge. Thus, the chaplain was an instrument of the will of the commanding officer on a wide variety of issues. The submission by the Chaplain General, Johan de Witt, stresses that officers were not, however, permitted to determine the contents of sermons and were obliged to respect the confidentiality

12 In a submission to the Commission, Revd Leigh Sundberg, a former Methodist chaplain to the military, discusses the attitudes of the various churches to the chaplaincy. See [A Critical View of the Role of the Military Chaplaincy between 1960 and 1993](#).

13 Submission on the military chaplaincy by the Reverend Leigh Sundberg.

between chaplains and those members of the military who chose to meet with them. The relationship between state and church was nevertheless frequently a compromised one as a result of the chaplaincy. The principle of non-interference by the military was often violated by individuals. Chaplains, in turn, often became part of the military milieu in which they served. By default if not design, they were part of an institution that proclaimed obedience to the state as having been instituted by God.¹⁴

*Our silence was in fact sin and our failure to act decisively against all forms of apartheid made us party to an inhuman political ideology.*¹⁵

- 54 This is not to say that all chaplains *intended* to give legitimacy to the policies of the state. There were different understandings of the social and political situation within which the SADF existed. Chaplain General de Witt conceded that some chaplains *were* protagonists of state theology. At the same time, he insisted that the majority of chaplains, each in their own way, regarded themselves primarily as ministers of the Gospel, responsible for the pastoral care of their flock.
- 55 After completing his theological training, Professor Dirk Human served for some time as national service chaplain (*dienspligkapelaan*) in the SADF. In a separate submission, he contended that a number of national service chaplains became very critical of some aspects of the chaplaincy. From time to time, they came into conflict with the higher echelons in the Chaplain General's office, especially on issues of the church's ideological support towards the struggle (*die bosoerlog*), the close co-operation between church and state, the obligatory wearing of military uniforms, as well as the way in which pastors or priests were appointed to the chaplaincy.
- 56 The Revd Leigh Sundberg, a former Methodist chaplain, argued in his submission that: "the chaplaincy was by no means a convergent whole". Individual chaplains carried with them "different views and degrees of conviction about the social and political context". He stressed that, as an institution, the chaplaincy was an arm, an organ of the SADF which was seen to be defending white privilege.
- 57 In general, however, apart from the intentions of individuals within it, the chaplaincy was a tool in the hands of the military, and thus an important cog in the apartheid machine. The degree of involvement of the chaplaincy in the defence forces is a good illustration of the importance that the apartheid state attached to religion and its power to command allegiance. It illustrates, too, the complexity and interconnectedness of the social, political and cultural web in South Africa.

14 Sundberg submission.

15 Rustenburg Confession.

Acts of omission

Avoiding responsibility

- 58 The idea of 'responsibility' differs amongst groups. While some communities (especially, though not only, English-speaking churches) saw themselves as consciences of the nation¹⁶, others defined their responsibilities primarily to their own members. Communities generally expressed the view that it had been their moral responsibility to speak out against injustice, making their silence under apartheid especially regrettable. Offering a variety of reasons, including complicity with white business interests, poor or inadequate theology or some other reason, faith communities and their leadership confessed to silence in the face of apartheid wrongs. In its submission, the Roman Catholic Church said that this was perhaps its greatest sin. The Salvation Army too, despite its heritage of "standing up and being counted", noted its lack of courage. Even the Uniting Reformed Church, which in the 1980s was an important player in opposing the theological justification of apartheid, confessed to taking too long to make a stand, particularly against the migrant labour system. Such a failure indicated "silent approval" of state actions.
- 59 Farid Esack accused the Muslim leadership of failing to speak out strongly against apartheid and especially of remaining silent after the death in detention of Imam Abdullah Haron in 1969, despite the injuries found on his body.
- 60 The Hindu Maha Sabha said that Hindu religious leaders failed their communities by failing to protest against apartheid. This created the impression that Hindus were part of the system. The community also failed in that it did not remove those "irresponsible" leaders, as it should have done.

Lacking courage

- 61 Communities as diverse as the Church of England, the Catholics, the Council of African Initiated Churches and the Presbyterians admitted that they could have been more aggressive in campaigning for reform. They gave various reasons for this. Sometimes they were protecting the interests of their wealthy constituents. Sometimes it was a simple failure of nerve or a refusal to place privilege - whether of individuals or of the community - at risk.¹⁷ The Jewish community, with fresh memories of Nazi atrocities, said that it feared to give the impression that it was against the state. The Catholics made a similar observation, citing its tenuous

¹⁶ Nico Smith's Open Letter alluded thus to the calling of Christian ministers.

¹⁷ It was not only specific members that were privileged - faith communities themselves (for instance the English-speaking churches) had a prominent, secure place within society and can also be described as 'privileged'.

position as *'die Roomse kerk'*. The mostly German Evangelical Lutheran Church of Southern Africa (ELCSA) spoke of its minority cultural status.

Failure to translate resolutions into action

62 In their submissions, faith communities commonly confessed not only to a failure to speak, but also to a failure to act. Many communities that were opposed to apartheid in principle found it difficult to translate strong resolutions into practical action. In the nature of institutional politics, resolutions were watered down by the time they were actually passed.¹⁸ More than logistic problems, such failures represented “a blatant omission and silent approval of the conditions and main cause of human rights violations.”¹⁹

Failure to support members who were involved in anti-apartheid activities

63 Faith communities did not necessarily support the activities of their activist members or even leaders. ELCSA confessed to not encouraging its clergy to speak out against atrocities and failing to support those who did. The Church of the Province apologised to Archbishop Tutu for its failure to support his call for economic sanctions against the former regime. The Baptist Convention accused the Baptist Union of having a number of activist members, including some detained on Robben Island, but refusing to acknowledge them. Farid Esack accused Muslim leaders of denying space and legitimacy to Muslims engaged in anti-apartheid activities.

64 Opposition to apartheid by members of faith communities tended to take the form of individual opposition by people who, often despite the institutions to which they belonged, remained faithful to what they saw as the true spirit of their religion. These included, during the period under review, people such as Trevor Huddleston, Beyers Naudé, Ben Marais, Cosmos Desmond, David Russell, Sheena Duncan, Frank Chikane, Sister Benedicta Ncube, Smangaliso Mkhathshwa, Molvi Cachalia, Abdullah Haron, Hassan Solomon, Farid Esack, Ebrahim Rasool, Ela Gandhi, Franz Auerbach and others. Some rose to leadership positions in their respective churches, notably the Reverend Seth Mokotimi, Archbishop Dennis Hurley, Archbishop Desmond Tutu and Dr Allan Boesak.

65 Similarly, institutions that were engaged in anti-apartheid activities and had the apparent verbal support of faith communities were effectively unsupported. In 1975,

¹⁸ See for instance the Uniting Reformed Church of South Africa submission.

¹⁹ Uniting Reformed Church of South Africa submission, page 6.

the Christian Institute was declared an 'affected' organisation by the Schlebusch Commission and thus prevented from receiving external funds. Little or no material support came from those churches that had verbally supported it in synods and assemblies. When it was banned two years later, along with its executive leadership, little action was taken and little support given to many of those who were affected.

■ FAITH COMMUNITIES AS VICTIMS OF OPPRESSION

66 Black, coloured and Indian members of faith communities suffered under apartheid legislation. Forced removals had a powerful effect on faith communities. The effects were also more direct, where faith communities were attacked for what they stood for — as alternative centres of loyalty or (in the eyes of the state) disloyalty.²⁰

Direct attacks by the state on members and organisations

67 Perhaps the most famous instances of direct attacks on churches and related institutions by the state were the banning of the Christian Institute in 1977 and the 1988 bombing of Khotso House, the headquarters of the SACC. This latter action by the state should be seen in the context of an ongoing battle with the SACC, waged on a number of fronts, symbolic (through media disinformation) and legal (the Eloff Commission). The SACC said that it was often the target of security raids. Many SACC staff members and associated personnel were detained, and some tortured. Others died in mysterious circumstances.

68 Six weeks after the bombing of Khotso House, the headquarters of the South African Catholic Bishops Conference was destroyed by arsonists who, it is now known, were agents of the state.²¹ Father Smangaliso Mkhathshwa, the Secretary General of the Bishops Conference, was detained and tortured by the state many times. Other faith communities said that their leaders, members and offices were targeted and detained. Post was intercepted and telephones tapped. The free movement of church officials and representatives inside and outside South Africa's borders was hindered.²²

20 Despite Farid Esack's claim at the hearings that Muslims suffered not as Muslims, but as coloured or Indian people, it is clear from other submissions that the state did target faith communities, trying to win their loyalties and marginalise those of their members who opposed the state. These communities existed in a state of siege, as they were conscious of their vulnerability to apartheid legislation.

21 Loss of life was narrowly averted when the fire was put out before it reached the explosives placed by the perpetrators.

22 Archbishop T. W. Ntongana was barred from attending funerals of activists.

69 The submissions of the MJC, the MYM and Farid Esack mentioned Imam Abdullah Haron who was detained for four months in 1969 under the Terrorism Act and tortured to death. The Church of the Province singled out Father Michael Lapsley as “a living icon of redemptive suffering within [the Church of the Province]”. Father Lapsley lost both arms and an eye in a savage parcel bomb attack in April 1990 (two months after the unbanning of the liberation movements).

Closure of buildings, schools and institutions

70 Inevitably, faith communities were affected by Group Areas legislation; congregations were forced to relocate and historic buildings lost.²³ Among those mentioned in the submissions were the London Missionary Society church at Graaff Reinet (built in 1802) and the stone church at Majeng in the Northern Cape (built in 1874 and bulldozed in 1975). According to the submission of the United Congregational Church, the congregations of these churches were declared “trespassers in their own homes.” The Moravian Church said it suffered the loss of a number of Churches, especially in Port Elizabeth and Cape Town.²⁴ Churches were forced to sell properties at low prices - something which seriously hindered their efforts to re-establish congregations after removal.

71 Bantu Education forced the closure of mission stations and schools that had provided education for Africans for many years.²⁵ Several churches with a long tradition in mission education, such as the Methodist Church, the United Congregational Church and the Church of the Province lost large numbers of primary schools and many secondary schools as well. The Methodist Church spoke of losing Kilnerton and Healdtown, and the United Congregational Church of the loss of Adams College and Tiger Kloof. The Reformed Presbyterian Church spoke of the loss of Lovedale and Blyswouth to the governments of Ciskei and Transkei. Indeed many properties belonging to this latter church were in so-called ‘white’ areas and the church was forced by law (which prohibited ownership of such properties) to sell them.²⁶ Several submissions made reference to the closing of the Federal Theological Seminary in Alice and the taking of its land.²⁷ Hospitals and other institutions were also affected by Group Areas legislation. One example of this is when the Seventh Day Adventist Church was forced to close its Nokuphilia Hospital in Alexandra township.

23 The loss of a Mosque is, the MJC explained at the hearings, especially significant within the Muslim community. More than a building, it is a sacred site and must never be abandoned. Group Areas legislation was a direct attack on this principle, assuming that the sacrality of such spaces was transferable to wherever the state decided to resettle the community.

24 In addition to losing land and space, the churches were sometimes forced to relocate a distance away from where their members lived.

25 For a discussion on the impact of the Bantu Education Act, see Charles Villa-Vicencio, Trapped in Apartheid (Cape Town and Mary-Knoll: David Philip & Orbis Books, 1988), page 95f.

26 The United Methodist Church claimed to have lost properties under the Holomisa regime in the late 1980s.

27 The Church of Scotland originally donated the land.

72 While many communities suffered losses, however, others benefited from them. The Volkskerk, a coloured 'split-off' from the Dutch Reformed Church, worshipped in a building they had built themselves in the centre of Stellenbosch, but lost it in the early 1960s under the Group Areas Act. The building was taken over by a white Christian congregation. The Uniting Reformed Church congregation in Messina made a similar allegation against its neighbouring Dutch Reformed Church congregation. According to the Hindu Maha Sabha presentation, Christian churches readily bought up Hindu religious sites after removals. The fact that faith communities - sometimes within the same tradition - both suffered and benefited from the same series of removals highlights the need for reconciliation and restitution between communities.

Repression and abuse of religious values and laws

73 Despite the many different religious allegiances of its subjects, the apartheid state saw itself as the guardian of 'Christian civilisation' in southern Africa. From the time of the arrival of the colonists in the seventeenth century, other faith communities were barely tolerated. Using education as its weapon, the apartheid state perpetuated this. Christian National Education was imposed on non-Christian faith communities – a fact highlighted in Muslim and Hindu submissions. The expression of certain religious values in education was repressed and other alien values were imposed. This was true even in the case of such Christian communities as the amaNazaretha where taboos concerning shaving were not honoured in schools and children were forced to remove their hair, causing ritual defilement.

74 Related to the repression of religious values in education was the repression of religious law, especially in the case of Islam and Hinduism. Muslim marriages observed by the Ulamas were not legally valid, making their children illegitimate.²⁸ The MYM pointed out that the state was also able to use religious laws to suit its own ends. It recalled how the Ulamas were co-opted onto a South African Law Commission committee on the recognition of Muslim marriage in 1986 - a cynical attempt on the part of the state to gain the approval of the Islamic community.²⁹

75 The religious values of the Baha'i faith preclude opposition to governments, a position contested by other faith communities. While its racially mixed worship practices and black leadership resulted in state surveillance, members of the so-called 'black Baha'i' were traitors in the eyes of some other blacks. This resulted in the tragic execution of four of its adherents at its places of worship in Umtata and Mdantsane.

²⁸ Marriages within the Shembe church were recognised neither by state nor traditional customary law, forcing members into three separate ceremonies.

²⁹ Pressure from other Muslim organisations forced the Ulamas to withdraw.

Manipulation by state propaganda

76 The apartheid state targeted faith communities in other ways. Evangelical groups such as the Church of England said it was subjected to state propaganda, especially in relation to the struggle against Communism. Such propaganda played on white fears and distorted the meaning of the Bible which the church saw as authoritative. It was thus “misled into accepting a social, economic and political system that was cruel and oppressive” and “failed to adequately understand the suffering of [its] many black members who were victims of apartheid.”³⁰ It might be an over-statement to link such ‘victimisation’ with the more direct and violent attacks by the state on anti-apartheid leaders. However, the fears of white church members made them vulnerable to propaganda, leading them into sins of omission. Archbishop Desmond Tutu, the Chairperson of the Commission said:

I would want and I'm sure that all of my fellow Christians would want to apologise to you members of other faiths for our arrogance as Christians when for so very long, we behaved as if we were the only religious faith in this country, when in fact from the year dot, we have been a multi-faith society.

Victimisation by other faith communities

77 Churches willingly engaged in fomenting division in society and were paralysed by propaganda. The demonisation and dehumanisation of other faith communities were prevalent, especially in conservative and right wing Christian groups. In 1986, at the same synod where its policy of uncritical support for apartheid was beginning to be challenged, the Dutch Reformed Church proclaimed Islam a “false religion”.³¹ The victimisation of African Traditional Religion by Christians was highlighted in the submission of Nokuzola Mndende: Africans were forced to become Christians, as a baptismal certificate was a common form of identification.

78 As Farid Esack observed at the hearings, the past was only partly about apartheid, security laws and so on: “It was also about Christian triumphalism.” All non-Christian faith communities were victimised by an aggressively ‘Christian’ state, and *die Islamse gevaar* took its place alongside the other enemies of the state.

³⁰ The impossibility of remaining politically neutral in apartheid South Africa was underlined for the Church of England in South Africa when its Kenilworth congregation was attacked by Azanian People's Liberation Army (APLA) cadres in July 1993. These cadres later told the Commission's amnesty committee that they were motivated by the fact that the churches were responsible for taking land away from the African people.

³¹ Martin Prozesky, 'The Challenge of Other Religions for Christianity in South Africa', *Journal of Theology for Southern Africa* 74 (March 1991), page 39.

79 There were other kinds of victimisation of one faith community by another – even *within* Christian churches. The submissions indicate that this took a number of forms, from denominational splits to the appropriation of buildings declared off-limits to black people under Group Areas legislation.³² Fault lines developed in churches on questions of commitment to the struggle, and conservative ‘splinters’ proliferated.³³ While these newer institutions often claimed ‘theological’ reasons for their existence as alternatives to mainline groups, many served the state as ‘shadow’ institutions and denominations set up to oppose those who were against apartheid policies. The Evangelical Fellowship of Congregational Churches, a breakaway from the United Congregational Church, was set up in the wake of the debate over that church’s membership of the World Council of Churches. It was linked to churches funded by the state and exposed in the 1979 information scandal.³⁴

A special note on gender and faith communities

80 The representatives of faith communities at the hearings were overwhelmingly male. Only four of the sixty-six persons who appeared before the Commission in East London were women, and little mention was made of the links between racial, class and gender oppression. Women and women’s groups played key roles in supporting victims and opponents of human rights abuses, as witnessed by the fact that most of those who testified at the human rights violations hearings were women, and usually did so on behalf of others rather than themselves. Yet, in churches and mosques, as elsewhere, they were relegated to secondary status.

■ FAITH COMMUNITIES AS OPPONENTS OF OPPRESSION

81 As in other institutional hearings (most notably the business hearings), what may be regarded as ‘opposition’ to apartheid was highly contested. Furthermore, the changing nature of apartheid repression meant that what was seen as opposition at one time could be seen as legitimisation at another. Faith communities across the board spoke of opposing apartheid, although the language and practices through which they expressed this opposition differed widely. For the Zion Christian Church, instilling pride in black people and teaching them to stand up straight in their own institutions, was a strong repudiation of the treatment of its members in ‘white’ society. The

32 See the submission of the Nederduitse Gereformeerde Kerk in Afrika, Messina.

33 The United Congregational Church, for example, testified at the hearings to the loss of its mother church in Cape Town over its support for the Programme to Combat Racism.

34 At the hearings, Bishop Dowling referred to the Catholic Defence League and Tradition, Family and Property – two groups that counterpoised themselves to the SACBC. Also worth mentioning in this regard is the Western Cape Council of Churches, set up by the state in counterposition to the SACC and the Western Province Council of Churches and linked closely with Joint Management Council structures. Michael Worsnip, ‘Low Intensity Conflict and the South African Church’, *Journal of Theology for Southern Africa*, 69 (Dec. 1989), page 94.

Hindu Maha Sabha spoke of reaching into its tradition of passive resistance, especially the Gandhian model. The Church of England spoke of private meetings with government officials. For the SACC, the watershed came when it began to identify itself with the liberation movements.

- 82 It is perhaps helpful to speak of a 'continuum of opposition', which takes into account not only positions relative to the conflict in society in the post-1976 era, but also demonstrates historically the radicalisation of various strands within faith communities. This allows us to identify the particular path opposition took as it developed over time.

Alternative institutions

- 83 Among the oldest ways that black people expressed protest was through the creation of separate, black institutions, under black control and using black cultural resources. This is the heritage of the African Initiated Churches that dates back to the early part of the century. Although African Initiated Churches were originally concerned mainly with creating an alternative to white churches, the state responded violently by repressing early movements such as the Israelites. If nothing else, this demonstrates the state's awareness of the role of religion as a tool supporting or destabilising its grasp on the hearts and minds of its subjects. More recently, the African Initiated Churches addressed black needs by instilling pride and moral discipline – a position strongly stated in the submissions of the Zion Christian Church and the amaNazaretha. The engagement was not so much with state ideology as with subverting the symbolic support of white domination.

Petitions, letters and private appeals

- 84 Many churches and faith communities petitioned the government openly or privately on a wide range of issues. They were joined, towards the end of the apartheid era, by the more conservative churches (such as the Church of England in South Africa) which were less comfortable with direct opposition.³⁵ The Dutch Reformed Church, which remained tied to state structures, also met privately with state officials to "express its doubts" about state policies and their application. The Dutch Reformed Church admitted, however, that such meetings rarely called into question the policies themselves, but asked only that they be "applied with compassion and humanity." Positioning itself as "politically neutral", the leadership of the Baha'i Faith nonetheless also met with officials in private to present its philosophy of inclusivity.

³⁵ In both their submissions, the Church of England in South Africa spoke of how their leaders discreetly approached PW Botha and FW de Klerk to express "concern about wrongs". They did not, however, indicate what the response of the state was, nor did they spell out precisely what their "concern" was.

85 Leaders of communities that were more public in their opposition issued open petitions. In the 1970s, the MJC issued a letter of protest to the government over human rights abuses during the 1976 riots. The SACC and other ecumenical Christian leaders adopted a stronger tone as well, warning the government of what might happen should change not occur.

Official statements and resolutions

86 The submissions spoke of numerous statements on apartheid that were issued by faith communities during the mandate period. Some of these demonstrate the variety of ways in which faith communities presented their opposition. The gradual radicalisation of statements – especially after 1976 – is also significant.³⁶

87 Of the Protestant churches, the United Congregational Church, the Presbyterian Church and the SACC made special mention of the ‘Cottesloe Statement’ and Conference (1960), set up in the wake of the Sharpsville tragedy. The statement “opposed apartheid in worship”, but also “in prohibition of mixed marriages, migrant labour, low wages, job reservation and permanent exclusion of ‘non-white people’ from government.” The fact that this statement - despite its paternalism in comparison with later documents - went beyond strictly ‘church’ matters in the eyes of the state is significant. Previously churches had only been able to unite against apartheid when their own congregations were directly affected, as with opposition to the 1957 Church Clause. The ‘Cottesloe Statement’ also featured in the Dutch Reformed Church’s ‘Journey’ document as “an important stop”. Not only did it result in the marginalisation of some of its representatives (including Beyers Naudé); it caused “a deep rift between the Dutch Reformed Churches and many other recognised Protestant churches in the country.”³⁷ More than this, it set a precedent for state interference, not simply in the affairs of the Dutch Reformed Church (with which it already enjoyed a special relationship), but in those of the ecumenical churches.

88 The SACC submission stated that ‘The Message to the People of South Africa’ (1968) directly attacked the theological foundations of nationalism, saying that a Christian’s “first loyalty” must be given to Christ, rather than to “a subsection of mankind”. Christian groups began to engage in intensive social analysis in the early 1970s. The Study Project on Christianity in Apartheid Society (SPRO-CAS) was launched after the ‘Message’. SPRO-CAS set up several commissions, covering educational, legal, economic, social and religious areas. Later the Special Programme

36 Interestingly it seems that the more evangelical communities (especially the Baptist Union, Rosebank Union Church and Hatfield Christian Church), while claiming to have “made many submissions” to the government opposing apartheid, were vague and did not mention particular instances. Parts of their documentation lack concreteness.

37 Naudé would go on to establish the Christian Institute, originally to agitate for change in the Dutch Reformed Church.

of Christian Action in Society (SPRO-CAS II) was established to implement the report's recommendations.

- 89 Throughout the 1970s, the Council of Churches published materials expressing its opposition to apartheid and envisioning a post-apartheid society. In its submission, it highlighted the 'Resolution on Conscientious Objection' (1974) which, amongst other things, questioned the appointment of military chaplains to the SADF, and the 'Resolution on Non Co-operation' which urged Christians to withdraw from state structures. Two statements issued in the turbulent 1980s were notable. The first was the 'Call for Prayer to End Unjust Rule' which mobilised Christian symbolic resources against the 'Christian' state. The second was the 'Lusaka Statement' of 1987, which urged the churches to support the efforts of liberation movements, and occasioned "fierce opposition" from SACC members.³⁸ Theology was a battleground, and the term 'heresy' was used not only against those who contested classical dogma and its interpretation, but also against those who contested the meaning of such dogma in practice. The influence of Dr Allan Boesak, then President of the World Alliance of Reformed Churches (WARC), in promoting the adoption of the resolution declaring apartheid a heresy by the WARC in 1982, and subsequently by the World Council of Churches (WCC) and many of its member churches, was of far-reaching significance in the struggle against apartheid.³⁹
- 90 The 'Kairos Document', another watershed statement, was produced by the Institute for Contextual Theology in 1985 and proved highly contentious. Some churches rejected its analysis and theology, claiming it was a 'sell-out' to ideology; others (notably the United Congregational Church) set up special study groups in local churches. While the 'Kairos Document' was accused of polarising the debate about the relationship between churches and liberation movements, it can be argued that it merely gave expression to existing polarisation. Not all anti-apartheid Christian leaders signed it, though it had an impact beyond the Christian churches and was also mentioned in the MYM submission.
- 91 Dissension in the ranks of the Dutch Reformed Church concerning its support of the government was expressed most notably in the '*Ope Brief*' [open letter] published by 123 Dutch Reformed Church ministers in 1982.⁴⁰ However, as admitted in its 'Journey' document, the Dutch Reformed Church's protests were limited largely to private meetings with state officials. The production of the

38 See Charles Villa-Vicencio, Trapped in Apartheid, page 158f. Also pages 115, 144, 222.

39 See Jules de Gonsky and Charles Villa-Vicencio (Eds) Apartheid is a Heresy (Cape Town: David Philip, 1983).

40 See David J. Bosch, Adrio Konig and Willem Nicol, Eds. Perspektief Op die Ope Brief (Cape Town, Pretoria & Johannesburg: Human & Rousseau, 1982).

'Koinonia Declaration' in 1977 – a statement which opposed apartheid and its Christian justification – by scholars from the smaller Afrikaans-speaking Gereformeerde Kerke was significant. While the Gereformeerde Kerk declined to make a submission to the Commission, two of its members did so, drawing on the legacy of this statement.⁴¹

- 92 At a denominational level, discrimination in general and the policy of apartheid in particular was rejected as "intrinsically evil" by the Catholic Church in 1960 and as heresy by the United Congregational Church in 1982.⁴² In 1986, the Presbyterian Church and the United Congregational Church passed resolutions making rejection of apartheid a matter of *status confessionis* [a situation demanding a new confession of faith], claiming in essence that the church in South Africa stood in the same relation to apartheid as did the German church to Nazism during the 1930s. In 1982, the Uniting Reformed Church, which admitted to a heritage of failing to pronounce strongly on apartheid, produced the 'Belhar Confession', the first church confession to be produced on South African soil.
- 93 The international dimension to church confessions was notable, and was characterised by conferences and statements by 'linked' churches in other countries. However, not all overseas structures were heeded by their South African counterparts. The Salvation Army in South Africa remained silent about apartheid crimes even after the condemnation of apartheid by its General, Eva Burrows, in London in 1986. The Seventh Day Adventist Church also confessed that their position on apartheid was "out of step" with its overseas body.
- 94 Theological resistance was not, of course, limited to the Christian churches. Shortly after the 'Cottesloe Statement' was issued, the 'Call of Islam Declaration' (1961) was issued by the Cape Town MYM together with the MJC, the Claremont Muslim Youth Association, the Cape Vigilance Association, the Young Men's Muslim Association and a number of individuals and leaders. This was a declaration that apartheid was contrary to Islam and condemned Group Areas, pass and job reservation legislation. A 1964 national conference called by the MJC protested about the impact of the Group Areas Act on mosque life and passed a series of resolutions urging that, under no circumstances, should mosques be abandoned. In the 1980s, the involvement of many prominent Islamic leaders and members in anti-apartheid structures intensified. Muslim leaders participated in the UDF 'Don't Vote' campaign, arguing that a vote for

41 See 'Die Koinonia Verklaring', Pamphlet (Potchefstroom & Germiston, 1977).

42 According to the MJC submission, the declaration of apartheid as a heresy in terms of Islamic theology dates from the Call of Islam Declaration in 1961.

the Tricameral Parliament was *haram* (prohibited). Language particular to Islam was used to intensify Muslim involvement in opposing apartheid.⁴³ Achmat Cassiem established the pro-PAC Qibla Mass Movement and Farid Esack and Ebrahim Rasool established the pro-African National Congress (ANC) Call of Islam. The MYM was also significant during this period.

- 95 In addition to passing resolutions against the violent policies of the state, statements made by faith communities during the 1980s expressed general concern about the violence sweeping the country. Sometimes this required recognition of the tension between the faith community's solidarity with the liberation movements and its concern about the violence with which apartheid was often opposed (as in the United Congregational Church submission). "Whilst the United Congregational Church was concerned about the loss of innocent civilian life in guerrilla attacks," it wrote, "it never allied itself with the hysterical reaction against 'terrorism' that the apartheid government orchestrated". Communities differed on the degree to which anti-apartheid violence was 'justifiable' (not simply 'understandable'). The Uniting Reformed Church stated that "the ambiguous nature of the decision with regard to justified actions against apartheid was often left to the conscience of members."
- 96 While it has been suggested that those responsible for the 'Kairos Document' share guilt through their support of violent uprisings, it must be pointed out that (whatever their perspective on the armed struggle on the borders) they did not condone 'necklace' killings or 'kangaroo courts'.
- 97 There were those, too, who claimed a 'third way', who argued that all violence was equally wrong and whose statements condemned both sides of the struggle. The Church of England's 1985 national synod expressed its "abhorrence of all violence and all oppression". Interestingly, while the Church of England expressed the view that the "only solution" to the problem of violence was to deal with sin through "reconciliation to God", the United Congregational Church claimed that the only answer (and here it specifically referred to the struggle on the borders between the SADF and the liberation movements) was justice for the people of South Africa.

Withdrawing from state structures

- 98 Another way that faith communities - and here in this ostensibly 'Christian' land we must speak of churches - expressed opposition to apartheid was by withdrawing from state structures in which they were complicit, particularly the military.

⁴³ Gerrie Lubbe cited in MJC submission.

- 99 It is significant that the preamble to the Tricameral Constitution declared that South Africa was a Christian state, even though the structures it proposed aimed at co-opting groups with many Muslim and Hindu members. Opposition to the Tricameral Constitution was strong, and there was an “overwhelming consensus” amongst Muslims that it was “contrary to the spirit of Islam”. Hindu leaders who participated were ostracised, the Maha Sabha told the hearings. The United Congregational Church urged its members to distance themselves from the Tricameral Parliament and removed such participants as the Reverends Alan Hendrickse and Andrew Julies - two former chairs of the United Congregational Church - from their ministers’ roll.
- 100 While many churches drew upon the just war tradition within Christianity, others were opposed to combat as a tenet of faith. For Seventh Day Adventists and Quakers, to have served in the military (on either side) would have meant apostasy from their faith tradition.⁴⁴ Many leaders in the conscientious objection movement were Christians and objected on the basis of Christian principles.⁴⁵ Individual Catholic priests refused to act as military chaplains or marriage officers, as did some clergy in the Uniting Reformed Church.⁴⁶ The Quakers and the SACC issued resolutions in 1974 supporting conscientious objectors. The United Congregational Church spoke of its “constant support” for objectors, the principle of objection and the End Conscription Campaign. It also refused to be co-opted onto the SADF-sponsored Board for Religious Objection. The Presbyterian Church, which had supported the rights of conscientious objectors from 1971, spoke of how, in 1982, it had initiated a process “aimed at moving the denomination towards opposing service in the SADF.” While it did not withdraw its chaplains until 1990 (underlining again the gap between resolution and action), it met in 1988 with delegations from the ANC and the PAC to discuss the possibility of appointing chaplains to their liberation armies. The United Congregational Church also supplied “pastoral care” to the liberation movements, including the South West Africa People’s Organisation (SWAPO), while the Church of the Province was in the unusual position of seeing its defence force chaplains providing succour to an army of occupation in Angola and Namibia and did so only ‘unofficially’.

44 Seventh Day Adventists faced a dilemma here, as their conservative doctrine of church-state relations also held loyalty to the state in high esteem. Some resolved the dilemma by serving in the medical corps. Others became objectors and suffered for it. Whether they were doing this to oppose apartheid, or to oppose war on principle is an important question which the church, according to its submission, only started to address after the evil of apartheid became apparent.

45 The Presbyterian Church mentioned especially Peter Moll and Richard Steele. See also the submission by the Reverend Douglas Torr.

46 Mentioned in the United Reforming Church submission as “religious objectors” were the Reverends D Potgieter, B Nel, N Theron, C Krause and Brother B de Lange.

Civil disobedience and passive resistance

- 101 Another way in which faith communities expressed opposition to the policies of apartheid was through deliberate disobedience of state laws. From 1981, for example, the Presbyterian Church embarked on a campaign of defying laws on mixed marriages, group areas and quoting banned persons and publications. This followed the work of the Reverend Rob Robertson at a local level, whose multi-racial and multi-class congregations in East London and Johannesburg represented “the first move to take actual steps to reverse the segregating effects of apartheid on congregations and to set an example to the nation”.⁴⁷
- 102 Other local congregations deliberately flouted laws by promoting mixed worship. The Baha'i Faith came under scrutiny for insisting that its members meet together across racial boundaries and the Ulama spoke of Muslims of different race groups worshipping and studying together. It can be argued that these were not always deliberate acts of defiance,⁴⁸ but were simply activities that conformed to the norms of the faith community's tradition - sharing a common faith across racial barriers. The fact that they flew in the face of the state only underlined the fact that the state's policy was wrong. Institutional resistance was expressed, for instance, in the Catholic Church's opening of its schools to all races in 1976 – something which engaged it in battle with the state until 1991.

Solidarity with liberation movements

- 103 While some faith communities (mostly at a local level) participated in protests and defiance campaigns from the outset, and others (specifically the Dutch Reformed Church) pledged loyalty to the 'Christian' state, most faith communities throughout the 1960s and 1970s attempted to find a middle path – choosing not to lend full support either to the liberation movements or the state.
- 104 The aftermath of Soweto resulted, however, in more radical responses from faith communities. In 1978, the Reformed Presbyterian Church said that its Moderator, Reverend DM Soga, declared that a 'Kairos' had arrived for the churches in South Africa. In that community's first public stance against the government, Soga spoke of the “daring” of the younger generation that was now rising up against oppression.

47 Citing Dawid Venter

48 And indeed the Baha'i submission spelt out clearly that they had no intention to challenge the state.

- 105 The UDF, launched in 1983, had strong representation from faith communities. One of its affiliates was the MJC, which saw itself as an oppressed community in solidarity with other oppressed communities.⁴⁹

*We are placed in a position of direct responsibility for declaring and living the truth in South Africa in a situation where untruth reigns supreme.*⁵⁰

- 106 As the 1980s wore on and the political climate became more intense, several church denominations came to realise that their loyalty commanded them to take a stand either for the liberation movements or for the state. There was contact between faith communities and liberation movements in exile throughout the 1980s, and the United Congregational Church assembly met with ANC leaders in Gaborone in 1987. In 1988, a number of Afrikaner academics from the University of Stellenbosch travelled north "in search of Africa", and while they were not permitted to meet officially with the exiled ANC, there was contact at an informal level. This dispelled some of the state-sponsored propaganda about the ANC, and helped foster debate in one of the bastions of Afrikaner nationalism.⁵¹ The World Conference on Religion and Peace also met with leaders in Zambia in 1988 to discuss religion in a post apartheid South Africa.
- 107 The Catholic church mobilised its own structures (Young Christian Workers, Justice and Peace groups and so forth) and opened its parish halls to popular organisations for meetings, gave refuge to activists on church property or helped them leave the country. It also participated in the Standing for the Truth campaign – an SACC initiative supported by other faith communities. Roman Catholic theologians, like Albert Nolan, were formative voices on the South African theological scene.
- 108 By 1988, the political activities of the UDF and COSATU (Congress of South African Trade Unions) became severely restricted and faith community leaders began to fill important leadership roles. The solidarity between these faith community leaders and the liberation movements intensified. It must not, however, be forgotten that such leaders and activists were minority voices within their own community structures. By the end of the 1980s, few communities had moved beyond cautious statements of concern.

49 Indeed the idea of a 'common struggle' meant interfaith co-operation at a number of levels - something condemned by more conservative Muslim groups. It is notable that the Western Province Council of Churches and the Witwatersrand Council of Churches also affiliated with the UDF - the only two regional partners of the SACC to do so - giving the same reasons as the MJC as being part of a 'common' struggle. In fact, interfaith co-operation was probably the strongest in the Western Cape amongst Muslims and Christians and later Jews for Justice, precisely because of this factor.

50 Launch of the Standing for the Truth Campaign, 1988.

51 See J Kinghorn, BC Lategan & CF van der Merwe, *Into Africa: Afrikaners in Africa Reflect on Coming Home* (Stellenbosch: The Centre for Contextual Hermeneutics, 1988).

The sanctions question

- 109 As the repression of the 1980s escalated, some faith communities and organisations joined the liberation organisations in appealing to international partners to press for economic sanctions.⁵² Many however opposed sanctions or were ambivalent on the question. Some, like the Church of the Province, confessed to its failure to support sanctions only as late as 1989.⁵³ The Catholic Bishops Conference, “fearing a great increase of poverty and unemployment”, supported sanctions with reservations. “History”, it said, “will be the judge”. The only English-speaking church to give unqualified support to sanctions from the outset was the United Congregational Church.⁵⁴
- 110 Many people (mostly white) voiced opposition to sanctions, ostensibly because they would ‘hurt blacks’ as well as themselves. This was no less true of members of faith communities. However, communities were also striving to voice what the majority wanted and to bring them into the debate. In spite of surveys used by liberals to argue that a large number of blacks opposed sanctions, surveys also concluded that the majority recognised the leadership of people such as Desmond Tutu and Allan Boesak in speaking for them on the question.⁵⁵

A voice for the voiceless

- 111 Faith communities have strong traditions that call on them to speak for the voiceless. But the leadership of the English-speaking churches failed to express adequately the aspirations of their constituents, the majority of whom were black. The English-speaking churches were concerned not to alienate their members, while the Afrikaans Reformed Churches promoted the interests of Afrikaner nationalism. It was left, said the SACC in its submission, to organisations such as itself, to act as the “legitimate voice” of South Africans. Indeed, the SACC became an internationally significant information centre, representing the oppressed before the world. It could do this, Bernard Spong told the hearings, because its network of churches reached every corner of society.

52 The MYM noted that most Muslim countries cut their ties to South Africa during the apartheid years. Ironically, this created difficulties for South African Muslims. Those on pilgrimage suffered tremendous hardship, financial and personal loss and humiliation when undertaking their trip to Mecca.

53 Ironically, it was the Church of the Province Archbishop of Cape Town who was one of the most vocal proponents of sanctions.

54 The Assembly adopted a resolution supporting “immediate and comprehensive sanctions” in 1986.

55 Cecil Mzingisi Ngcokovane, ‘Economic Sanctions: The Only Remaining Non-Violent Means to Dismantle Apartheid’, *Journal of Theology for Southern Africa* 62 (March 1988), 53-61; Mark Orkin, *Disinvestment: the struggle and the future* (Johannesburg: Ravan Press, 1986).

- 112 The policies of the apartheid state created turmoil not only in South Africa, but spilling over into other countries as well, as people were uprooted and removed from their homes and members of resistance movements were forced to leave the country. This created a refugee problem. The United Congregational Church's regional identity allowed it to express special concern for refugees both in South Africa and in neighbouring states.
- 113 South African faith communities have a rich tradition of expressing themselves in news publications, and it was in this important way that faith communities voiced the aspirations of black people, as well as creating space for discussion and debate. The Catholic Church started the *New Nation*, while the Muslim community started the *Muslim News* and *Al Qalam*. These publications went beyond sectarian interests to address the core issues of exploitation, and faced banning orders on numerous occasions.

■ FAITH COMMUNITIES AND SOUTH AFRICA'S TRANSITION

- 114 The story of faith communities and their members who were involved in opposition to apartheid does not end with the unbanning of the liberation movements. As the 1980s drew to a close, some organisations began looking toward the future and preparing people for democracy. One example of the many that illustrate the way in which the transition was anticipated is Diakonia, an ecumenical group in the Durban area, which published 'The Good Society: Bible Studies on Christianity and Democracy'⁵⁶ - anticipating voter education programmes in the run up to the 1994 elections.
- 115 Faith communities were engaged in a number of ways during South Africa's transition. A large number of Muslim organisations joined in a national conference as the negotiations between the De Klerk government and the previously banned movements got underway. The WCRP played an important role with its 1990 conference, called 'Believers in the future', which issued a 'Declaration of Religious Rights and Responsibilities'. Together with the liberation movements, the SACC and the Catholic Bishops Conference formed the National Co-ordinating Committee for the Repatriation of South African Exiles in 1991. Amongst Christians, the 1990 Rustenburg Conference and Statement were of great significance and the confessions there anticipated those made at the Commission hearings.⁵⁷

⁵⁶ Written by James Wyllie, Vido Nyobole & Sue Britton.

⁵⁷ See Louw Alberts & Frank Chikane, Eds, *The road to Rustenburg: the church looking forward to a new South Africa* (Cape Town: Struik Christian Books, 1991).

- 116 The National Peace Accord was launched in September 1991, with heavy involvement from the SACC, with the aim of helping to create an ethos conducive to democratic transition. The Catholic Bishops Conference and the SACC, together with a coalition of non-governmental organisations (NGOs), launched Education for Democracy. This project worked at local levels to create awareness of constitutional governance and key political concepts. It was directed both at illiterate black people and urban white people. The latter had never experienced non-racial democracy and expected, on the whole, to retain their privileges in a new society. The Church Leaders Forum, representing a wide collection of denominations, met with government leaders and urged them on the path to a negotiated settlement. The group included traditional foes of the SACC, including Reverend Ray McCauley of the International Federation of Christian Churches and Professor Johan Heynes of the Dutch Reformed Church.⁵⁸ After CODESA broke down, this forum worked to restart the negotiation process. The WCRP, SACC and the Catholic Bishops Conference formed the Panel of Religious Leaders for Electoral Justice to monitor the elections. The WCRP also sponsored the forum which brought monitors from other countries.⁵⁹
- 117 Does all this mean that faith communities were engaged in South Africa's democratic transition? Sadly, it is not possible to generalise here. For, once again, it was not individual faith communities, but believers as individuals and ecumenical and interfaith coalitions that were engaged. The departure of religious leaders and activists into government has created a huge leadership vacuum at an ecumenical (especially Christian) level and testifies to the close links between the ecumenical movement and progressive political activism. But at a local institutional level (including church, mosque and temple) and a denominational level, communities remain hesitant about entering the fray. In its submission, the SACC spoke of how difficult it is to focus the churches' attention, as many now wish to enter into relations with the government on a denominational level.
- 118 The period from 1984 to 1994 was one of rich co-operation across the boundaries of the faith tradition around common opposition to apartheid. Religious institutions have benefited across the board as the new state has made a concerted effort to ensure that all religious groups are represented in any activity initiated by the state.

58 One positive thing about the ecumenical activity of the early 1990s was the involvement of a wider spread of leaders, including evangelical and charismatic leaders who were not involved in progressive moments in the 1980s. Perhaps this ecumenical contact prepared them for 'owning up' to the guilt of their communities at the hearings. Certainly, it was a bridge to their statements at the hearings where they committed themselves to active involvement in the transformation of the country beyond apartheid.

59 Details on the above and further examples may be found in Peter Walshe, Prophetic Christianity and the Liberation Movement in South Africa (Pietermaritzburg: Cluster Publications, 1995), 145-53.

■ FINDINGS ARISING OUT OF FAITH COMMUNITIES HEARINGS

The Commission finds that:

- 119 Christianity, as the dominant religion in South Africa, promoted the ideology of apartheid in a range of different ways. These included the overt promotion of biblical and theological teaching in support of apartheid, as was the case in the white Afrikaans Reformed Churches. Certain other denominations, historically established on racial lines, have for various reasons failed to unite – often because of residual or overt forms of racism. Most churches, the dominant English-speaking churches among them, practised ecclesial apartheid by appointing ministers to congregations based on race and the payment of unequal stipends. Religious communities in general, as a rule, failed adequately to support dissident ministers, priests, imams, rabbis and lay persons who found themselves in confrontation with the state. Many religious institutions also failed to provide economic support to those who were most severely affected by apartheid. The Commission acknowledges, at the same time, that some within the religious communities boldly resisted apartheid and paid a heavy price for doing so. It was further noted with appreciation, that all the religious groups who appeared before the Commission acknowledged their complicity with apartheid.
- 120 Chaplains, provided by the churches to serve the military, the police and other uniformed services, wore the uniforms of these services, enjoyed the rank of armed personnel and some carried side arms. They were part of the illegal cross border activities carried out by the military, and they accompanied troops into the townships and other internal situations of conflict on occasion. They were seen to be supportive of the offensive structures of the former state. As such, churches must accept moral accountability for providing religious sanction and theological legitimisation for many of the actions of the armed forces.
- 121 The failure by religious communities to give adequate expression to the ethical teaching of their respective traditions, all of which stand in direct contradiction to apartheid, contributed to a climate within which apartheid was able to survive. Religious communities need to accept moral and religious culpability for their failure as institutions to resist the impact of apartheid on the nation with sufficient rigour. The failure of the churches in this regard contributed not only to the survival of apartheid but also to the perpetuation of the myth, prevalent in certain circles, that apartheid was both a moral and Christian initiative in a hostile and ungodly world.

- 122 Religious proselytising and religious-based nationalism have not only sown the seeds of inter-religious suspicion, distrust and strife; but they have also contributed directly to religiously inspired conflict. This has occurred as a result of some forms of missiological teaching and manifestations of Christian imperialism and because of anti-Semitic as well as anti-Islamic theologically-based propaganda. Religious communities must take responsibility for the actions of their followers in this regard. The nation has a right to expect of them a commitment to mutual respect between religious groups, the building of communities that include people of different religious, racial and ideological persuasions and the promotion of peace and justice.
- 123 Missionary and colonial initiatives which undermined African culture and traditional religions – a practice that continues to be perpetuated in many circles today – require careful reassessment by all religious communities. Christianity has, because of historical and power relations, a special responsibility in this regard. Religious communities need to share responsibility for the undermining of cultural and religious identity, not least among many urbanised African youth. The reaffirmation of *ubuntu*⁶⁰ – grounded as it is in traditional African culture and increasingly supported by other religious groups – requires other established religions to gain a new understanding of traditional African religious symbols and beliefs.

⁶⁰ *Ubuntu*, generally translated as 'humaneness', expresses itself metaphorically in *umuntu ngumuntu ngabantu* – 'people are people through other people'.

Institutional Hearing: The Legal Community

■ INTRODUCTION

- 1 In his speech from the dock in 1962, Nelson Mandela said:

I would say that the whole life of any thinking African in this country is driven continuously to a conflict between his conscience on the one hand and the law on the other... The law as it is applied, the law as it has been developed over a long period of history, and especially the law as it is written by the Nationalist Government is a law which in our view is immoral, unjust and intolerable. Our consciences dictate that we must protest against it, that we must oppose it and that we must attempt to alter it.

- 2 All branches of the legal profession and interested organs of civil society were invited to make submissions on the role played by lawyers between 1960 and 1994. Those who responded to the Commission's invitation are listed elsewhere in this volume. The Commission was deeply disappointed that judicial officers (both judges and magistrates) declined to attend the hearing and that their responses took the form of a few written submissions. The representative bodies of the rest of the profession were slightly more forthcoming: written and oral submissions were received from the General Council of the Bar (GCB), the Association of Law Societies (ALS) and the Society of Law Teachers. Several individual practitioners also submitted their views, as did the 'alternative' lawyers' organisations – the National Association of Democratic Lawyers (NADEL) and the Black Lawyers Association (BLA). The Legal Resources Centre (LRC) and Lawyers for Human Rights (LHR) also made significant submissions. From government, the Minister and Department of Justice put forward their views in submissions, and several attorneys-general also attended. Amnesty International and the Centre for the Study of Violence and Reconciliation gave the Commission the benefit of their views.

- 3 In its invitation (which was issued both generally and to particular organisations and individuals), the Commission requested that, where appropriate, attention be paid to the following issues, indicating the general thrust of the hearing:
- a The relationship between law and justice.
 - b Principles and standards by which to evaluate the legal system.
 - c What informed judicial policy?
 - d What, if any, attempts were made by the executive or other organisations or individuals to undermine the independence of the judiciary?
 - e The relationship between the judiciary and the state, the State Security Council, political parties or organisations.
 - f The appointment of members of the judiciary.
 - g The role of the judiciary in applying security legislation.
 - h The relationship between the South African judiciary, the legal profession and the law schools.
 - i The exercise of judicial discretion.
 - j Racial and gender discrimination in the judiciary, legal profession and law schools.
 - k The role of other role-players – namely the Minister of Justice; the Department of Justice, its line functions and Justice College; magistrates; attorneys-general; the legal profession, including the Bar Council, the Association of Law Societies and the Para-Legal Association; lay assessors; interpreters; and the ‘home-lands’ (self-governing territories and independent states).
 - l Recommendations on how the legal system can be transformed to reflect a human rights culture and respect for the rule of law, and which will address the perception that justice is the privileged domain of few in our society.
- 4 The Commission was at pains to stress to those invited that:

It is not the purpose of the hearing to establish guilt or hold individuals responsible; the hearing will not be of a judicial or quasi-judicial nature. The hearing is an attempt to understand the role the legal system played in contributing to the violation and/or protection of human rights and to identify institutional changes required to prevent those abuses which occurred from happening again. We urge all judges both serving and retired to present their views as part of the process of moving forward.

■ SUMMARY OF THE SUBMISSIONS

- 5 The transcript of the hearing runs to more than 650 pages, to which must be added the hundreds of pages of written submissions.¹ What follows must, therefore, be read as an extremely generalised summary of the main points made by those who submitted their views. In the light of their pivotal role in the administration of justice and the controversy that surrounded their decision not to appear in person at the hearing, the chief focus was almost inevitably on the judges. This concentration on the superior court judiciary should not, however, be allowed to obscure the lamentable non-appearance of the magistracy, especially when it is considered that this is the level at which most South Africans engage with the courts. In addition, magistrates played a critical administrative role in the implementation of state policy throughout the period under review.
- 6 In addition, valuable insights were gained into the crucial supportive roles played by the advocates, attorneys, academics and the prosecutorial authority in facilitating the enforcement of the law — both where it resulted in injustice as well as, more seldom, justice.

The argument of establishment bodies

- 7 A general theme or argument that permeated almost all of the submissions by the judiciary and the 'establishment' legal professionals (the GCB, the ALS and the attorneys-general) can be expressed as follows:
- 8 It was argued that the doctrine of parliamentary sovereignty under the Westminster system required of lawyers (and especially judges) to respect, and indeed to defer to, the will of the majority in Parliament, thus denying the courts the opportunity to fashion statute law to achieve a degree of justice in the face of legislated injustice. In other words, the 'intention of the lawgiver' was the supreme guide in the interpretation of statutes.

¹ Some of these have been reproduced relatively fully in the 1998 volume of the South African Law Journal, parts I and II.

- 9 Where there was some room for manoeuvre, particularly in the construction and development of the common law, or where clear statutory ambiguity permitted it, lawyers argued for and judges mostly adopted an interpretation that favoured liberty and equity.
- 10 Any attempt by the judiciary too obviously to circumvent the unjust effects of apartheid measures would, it was argued, have led inevitably (at best) to further legislative steps to reverse such decisions or (at worst) to the overt subversion of the formal independence of the courts and the 'packing of the Bench'.
- 11 While there were examples of judicial decisions, behaviour and professional conduct which were clearly unjust and ought to be apologised for, and while it was generally conceded that much of what happened in and around the administration of justice ought to have been resisted and condemned openly and forcefully by individual lawyers and the organised profession, the record of judicial impartiality and pursuit of justice was satisfactory, if not good.
- 12 This general picture, allied with enormously principled and courageous action by a small minority of lawyers from all the branches of the profession, assisted in establishing the climate in which the political negotiators in the 1990s could agree that a constitutional dispensation (resting on the twin foundations of a bill of rights and the power of judicial review) was the most appropriate guarantee of dignity, equality and freedom for a future South Africa.
- 13 It was argued that any fair and accurate investigation into, and weighing up of, past judicial and lawyerly conduct would have to involve an effective 're-trial' of the issues in their appropriate context – a complex, time-consuming, expensive and ultimately senseless undertaking. In any event, this could lead only to the blaming of individuals or groups of lawyers, which was not part of the Commission's agenda. It would also prove unhealthy for the development of a coherent and respected post-apartheid jurisprudence.
- 14 It would have been improper, both in form and substance, for judges to appear in person at the hearing, for this would affect their independence, which was guaranteed under the Constitution. This is all the more important now that the power of judicial review on constitutional grounds is entrusted to those judges.
- 15 Legal education and training had been largely uncritical of unjust legal dogma and practice. Those few academics who had dared to speak out had received

insufficient support from their colleagues and institutions. This was not, however, particularly unusual in international terms and students needed to be familiar with current legal rules in order to be equipped to practise law.

- 16 At no stage, had there been any question of direct interference with the administration of justice by the executive or the legislature, in particular where disputes before the courts were concerned.
- 17 In a nutshell, it was argued that an administration of justice and a legal order that preserved a limited degree of impartiality and independence was better, in all circumstances, than a legal system that was completely subservient to the will and whims of the political masters in Parliament.

The counter argument

- 18 Naturally, submissions from bodies such as the BLA, LHR, the LRC and NADEL took issue with these propositions at almost every turn. For them, lawyers and the courts under apartheid, with very few and notable exceptions, had co-operated in servicing and enforcing a diabolically unjust political order. They argued that it made no sense to invoke a defence of parliamentary sovereignty. The validity of such a defence depended on at least a substantial degree of democracy in the political order, as well as a basic respect for the rule of law as a direct or necessary adjunct to legislative omnicompetence. Neither prerequisite was present to any significant degree in South Africa. Judicial independence was a myth that had been exploded in the daily experience, particularly in the magistrates', but also in the superior courts. Moreover, several meticulous empirical studies since the mid-1970s had demonstrated a judicial partiality towards the legislature and executive. The practising and teaching legal profession, it was stated, had willingly acquiesced in apartheid's subversion of whatever sense of justice may have hitherto been part of the common law and the legal system. Those practitioners and academics who dared challenge the political and/or legal order were not only not supported by their colleagues but were, more often than not, ostracised by them.
- 19 As a result, it was alleged, the basic fabric of the legal system had been subverted and become rotten with injustice. In order to begin to reverse this process and to lay the basis for the new constitutional order, a public reckoning and apology by the 'old-order' lawyers was essential. Arguments about the erosion of judicial indepen-

dence held no water when it was judicial action in the past which was being scrutinised, and when such independence was, in any event, more ritualistic than real.

- 20 These extraordinarily brief summaries of the positions presented and argued at the hearing cannot hope to portray the extent and complexity, littered with examples, of most of the submissions. Taken as a whole, the submissions and oral testimony form a valuable archive that bears close examination as one set of versions of the past. It will be for others to analyse and debate the arguments in the detail that they deserve.² For present purposes, the chapter proceeds to make certain assumptions and to draw conclusions concerning the above arguments, and to consider their impact on the way forward for the administration of the law and justice in South Africa.

■ ASSUMPTIONS

- 21 In reaching its findings, the Commission assumed the validity of certain principles and concepts, although aware that almost every one of them is a matter for extensive debate, and that such debates are not easily resolved. One must also acknowledge the benefit of hindsight, but the Commission feels sure that this factor has not made a material difference either to the assumptions or conclusions. It is not expected that the views expressed will be uncontroversial, for this is the nature of the exercise and the issues being reviewed. Nonetheless, in the starkness of the apartheid-context and in the light of the debates on such issues which took place in legal circles and the popular media throughout this period³, few lawyers and certainly no judges could claim to have been unaware that the role of law and lawyers under apartheid was at least open to question if not criticism.
- 22 The following appear to be assumptions about that role that enjoy relatively widespread acceptance, although the legal establishment was dismissive of them in the past and may still resist them today.
- 23 First, judges were able to exercise a choice in almost all circumstances, although in some cases the range of options might have been extremely narrow.

² See, for example, David Dyzenhaus, Judging the Judges and Ourselves: Truth, Reconciliation and the Apartheid Legal Order, Oxford: Richard Hart Publishing (forthcoming).

³ Examples of such debates include the judicial record on security and race issues, highlighted by Mathews, Dugard, Forsyth, Dyzenhaus and Ellman, amongst others; the 'Should judges resign/Wacks-Dugard debate' of the mid 1980s; the reports of the Rabie and Hoexter Commissions of the early 1980s, and the necessity for a bill of rights in the late 1980s. Before this even, was the controversy over the 'coloured vote' case of the 1950s and the 'packing' of the Appellate Division by the NP government, and the politics of the judiciary before 1950, discussed by Corder.

The inherent ambiguity of language and the diversity of factual circumstances with which judges were confronted allowed them a degree of latitude in deciding what the law was (even if it was cast in statutory form, and the more so if a part of the common or customary law) and in applying such legal rules to the concrete situations before them. Choices of a different and more far-reaching nature were available to legal practitioners (despite the much-vaunted 'cab-rank' approach said to apply at the Bar), to law teachers and students.

- 24 Second, all lawyers, as human beings, bring to their professional lives the baggage of their personal past, to which is added the communal culture so characteristic of the Bench and Bar, and to a lesser extent the side-Bar and academy. The values thus inculcated play an important part in shaping individual and corporate responses in situations where choices have to be made manifest in the courts by expressions of judicial policy. This is a proper part of the judicial process. It does, nevertheless, provide insights into underlying values.
- 25 Third, in the rare circumstances where little or no judicial choice exists, certain steps short of resignation are open to the judge. These include criticism of legislative policy both on and off the Bench, within the limits of propriety. Such limits are largely determined by the judicial oath of office and the doctrine of the separation of powers. In the case of South African judges, the oath demanded that they administer justice "to all persons alike without fear, favour or prejudice and in accordance with the law and customs of the Republic".⁴ Obviously central to the maintenance of a semblance of justice in the face of legislated executive injustice would be the meaning given to 'customs' (which could have been extensively interpreted to include the practices, and thus interests, of all the people of the Republic), as well as the prominence and scope given to the common law presumption of statutory interpretation (such as that the legislator intended minimal deprivation of rights and liberty and that its legislation should impact as equally as possible, and did not intend retrospective operation of statutes).
- 26 Fourth, the doctrine of the separation of powers naturally applied imperfectly in a system of government based on Westminster. Although the judiciary was formally independent of the legislature and executive once appointed, the very appointment process (which was in the almost-complete gift of the executive) as well as the execution of court decisions (again dependent on administrative co-operation) severely limited substantive independence. This inhibited the will and authority of the judiciary to exercise a real checking and balancing of the other two branches of government.

⁴ The Supreme Court Act, 59 of 1959, s 10(2)(a).

- 27 Fifth, the judiciary is part of government, a vital cog in the day-to-day execution of policy and enforcement of current law. Yet, the courts fulfil another function. As Lord Devlin has said, “the social service which the judge renders to the community is the removal of a sense of injustice”. Such a function contributes to stable order and peaceful government, but it cannot be wholly illusory. On occasion, the judiciary must be permitted to overrule executive action or temper legislative pronouncements that operate too unjustly. There needs to be substance to the notion of judicial independence, otherwise the courts will be seen as the mere obedient servants of the other branches of government. It is precisely this ‘space’, available to the judiciary and to lawyers, which can be legitimately and legally used to preserve basic equity and decency in a legal system. As so powerfully catalogued by Richard Abel⁵, creative and courageous lawyering (and judging) can be deeply influential in the body politic. Whether such initiatives became possible in the late 1970s and 1980s must be questioned.
- 28 Sixth, the appearance of judicial independence and adherence to legalism under the guise of ‘rule by law’ serves as a powerful legitimating mechanism for the exercise of governmental authority. It is all the more useful to a government which is pursuing legislative and executive injustice to be able to point to superficial regulation by the judiciary, while being able to rely on the courts not to delve too deeply in their interpretation and enforcement of law.
- 29 Seventh, there is an interdependence between all parts of the legal profession, such that most of the references to the judiciary above can be applied to the advocates, attorneys, teachers and students to some degree. No one who participates in an evil system can be entirely free of responsibility for some injustice; although it is possible for the good achieved by some to outweigh the negative aspects of their participation. Judge Edwin Cameron in his submission stated that:
- The overriding point is thus that all lawyers and judges, whatever their personal beliefs and the extent of their participation, were complicit in apartheid... but this does not conclude the moral debate about the role of lawyers; nor does it mean that there were no degrees of complicity or moral turpitude in the legal enforcement of apartheid.*
- 30 Law and justice are by no means co-extensive although, at a fundamental level, their interests and constituent elements are likely to coincide, and although the ultimate objective of a legal system (to endure) must be a quest for justice. An uncritical acceptance of promulgated rules of law is unlikely to contribute to the achievement of justice in any more than a formal sense.

⁵ Abel, Richard, *Politics by Other Means*. New York: Routledge, 1995.

■ FINDINGS

31 The hearing and written submissions to the Commission touched on all the above matters and many more. In setting out the findings below, the Commission merely accentuates those issues that seem to be relatively generally acknowledged in legal circles today, in a post-apartheid context. The absence of findings on other matters is not intended to signify their irrelevance, but is rather a reflection of the magnitude of the task that a comprehensive response would entail. As was stated in the invitation to participate in this process, it bears repetition that the findings that follow do not imply the ascription of guilt to any one lawyer or group of lawyers. The purpose of this exercise is rather to draw on the lessons of the past so that the legal process can be transformed in the future, the more surely to attempt to avoid the tragic injustice of apartheid-at-law.

The Commission finds that:

32 Part of the reason for the longevity of apartheid was the superficial adherence to 'rule by law' by the National Party (NP), whose leaders craved the aura of legitimacy that 'the law' bestowed on their harsh injustice. Significantly, this state of affairs was not achieved in the early stages of NP rule. It began after the coloured vote crisis in the mid-1950s, when the restructuring of judicial personnel and the Appellate Division took effect, and the white electorate lent its support to the constitutional fraud resorted to by the government to circumvent the entrenched clauses of the South Africa Act. It was manifestly abandoned when emergency executive decree became the chosen medium of government towards the end of formal apartheid – from the mid-1980s – when a climate of 'state lawlessness' prevailed and the pretence of adherence to the rule of law was abandoned by the Botha regime.

33 In the intervening thirty years, however, the courts and the organised legal profession generally and subconsciously or unwittingly connived in the legislative and executive pursuit of injustice, as was pointed out by a few at the time and acknowledged by so many at the hearing. Perhaps the most common form of subservience can be captured in the maxim *qui tacet consentire* (silence gives consent). There were, nevertheless, many parts of the profession that actively contributed to the entrenchment and defence of apartheid through the courts. The Pretoria Bar, for example, refused to admit black members and only passed an apology for its racism in October 1997.

34 There are many other examples:

- a Prosecutors who knew that the police had used brutal means to extract information from suspects and then assisted such interrogators from being questioned too closely on their methods.

Captain Jacques Hechter, a police officer who applied for amnesty for his part in a number of gruesome murders testified before the Commission that, prior to appearing in court, he was called in by the prosecutor and given the questions that would be put to him in court, together with the answers he should give. He would also be coached on what to say.

André Hendrickse, a prosecutor in the Cape, noted that his refusal to prosecute persons under the Group areas Act was because there was an official moratorium on prosecutions. The pressure that was placed on him by his superior because of pressure by the National and Conservative Parties eventually led to his resignation.

- b Attorneys-general who too easily launched prosecutions or granted 'no-bail' certificates on flimsy evidence.
- c Magistrates who uncritically granted police search and seizure warrants, and who conveniently found no one responsible for injuries and deaths in detention at inquests. Priscilla Jana noted in her submission that:

There were several inquests where nobody was found responsible ... the inquest of Ernest Dipali when he was found hanging in his cell, the inquest of Siphso Motsi, a COSAS [Congress of South African Students] leader who was arrested and found dead a few hours later.

- d Attorneys who failed to accept an unpopular political person as a client, perhaps for fear of social ostracism or the loss of lucrative commercial clients.
- e Advocates who were willing to appear for the government in civil actions where some of the basic building blocks of apartheid, such as racial classification or influx control or group areas, were being attacked as the unreasonable and invalid exercise of executive discretion.
- f Law teachers who chose to concentrate on 'safe' areas of the law or to teach

in such a way that no critical ability was imparted to the students.

- g Students who chose to be blinded by the glamour and material returns of the conventional mainstream of the profession, neglecting his or her potential role as a fighter for justice for all in South Africa.
- h In the greatest injustices of all, judges who too easily made sense of the illogical and the unjust in legislative language, and who too quickly accepted the word of the police or official witness in preference to that of the accused. Kathleen Satchwell in her submission deals extensively with the case of Linda Mogale, her client who was assaulted and tortured in detention. Despite evidence to this effect, the judge nevertheless rejected “as impossible” a process of police violence and system of intimidation.
- i The judiciary, which unthinkingly allowed judicial policy to be influenced by executive dictate or white male prejudice; which was intent on maintaining and protecting the *status quo*; which willingly participated in producing the highest capital punishment rate in the ‘Western’ world by the mid-1980s and an execution-rate that impacted overwhelmingly on poor black male accused. In her submission to the Commission, Paula McBride deals with a number of cases to illustrate this point.
- j The organised professional bodies which were obsequious in their attitudes to government policies, hounding those of their members who chose to buck the system politically. The GCB stated in its submission that the basis for striking Bram Fischer off the role of advocates was that he had dishonourably breached his undertaking to the court to stand trial. They dismissed suggestions that political considerations had any part in the application. Whilst the GCB apologised to the family, the apology was qualified and besmirches their conduct even more. Indeed, the Fischer family testified that the striking off of their father was done with indecent haste and was regarded by Bram as the “worst professional and personal betrayal he experienced”.
- k The organised profession took no effective initiatives to make the administration of justice more accessible to those who could not afford it, not at least until apartheid’s days were numbered. Their complacency in the face of the challenges thrown up by government injustice internally, and their defensiveness in international forums when foreign lawyers’ organisations dared criticise, are matters of public record.

- 35 The Commission believes that this was the position during the apartheid years. Many of those who appeared at the hearings and who made submissions acknowledge this to have been the case, although several qualified such admissions.
- 36 Yet, for all that this was the overwhelming pattern of the law and lawyers' conduct under apartheid, there were always a few lawyers (including judges, teachers and students) who were prepared to break with the norm. These lawyers used every opportunity to speak out publicly and within the profession against the adoption and execution of rules of law that sanctioned arbitrary official conduct and injustice. They explored the limits of their forensic skills in defending those on trial for offences in terms of such legislation, or in arguing for the invalidity of vague or unreasonable administrative action. They worked ceaselessly to prepare the cases of those targeted by the state, often in trying conditions and for little material reward. They advised and educated those in the community most vulnerable to official excesses, such as the rural poor and workers, through advice offices and religious bodies. They challenged their students to confront the relationship between law and justice and to translate their ideals into practice. They forswore the comforts of commercial practice for the sake of the upliftment of those excluded from all forms of power. They exercised their judicial discretion in favour of justice and liberty wherever proper and possible.
- 37 These actions demanded courage, strength, perseverance and clarity of purpose. There were not many in each generation who chose this lonely path, but there were sufficient of them and they were influential enough to be part of the reason why the ideal of a constitutional democracy as the favoured form of government for a future South Africa continued to burn brightly throughout the darkness of the apartheid era. Had their number been greater, had they not been so harassed and isolated by both government and the profession, the moral bankruptcy of apartheid would have been more quickly and starkly exposed for the evil that it was.
- 38 In a sense, those both inside the country and abroad who might have been embarrassed by the gross racism and exploitation of apartheid could seek some comfort in the semblance of an independent legal system. This 'justification' would not have been possible had even a strong minority of the legal profession united to strip the emperor of his clothes.
- 39 In the light of the above, should the lawyers who fought for justice against all odds have abandoned their cause for fear that their actions would lend credibility to such a semblance of independence? This question was, of course, ever present and

sometimes furiously debated, going to the heart of much of the jurisprudential controversy that surrounds the fundamental issue of ‘what is law, and how does it relate to justice?’

- 40 The Commission does not intend to enter the lists in this regard, but simply states its conclusion as briefly as possible. While the Commission does believe that substantive resistance to the injustice of apartheid by a significant number of lawyers would have undermined its effectiveness and betrayed its reliance on brute force — even if only through a prosecutorial authority reluctant to act and a judiciary uncomfortable with its complicity in injustice — in the light of the reality that those who chose to resist were relatively so few, the Commission finds that the alleviation of suffering achieved by such lawyers substantially outweighed the admitted harm done by their participation in the system.
- 41 Much was made, particularly by some of the judges who made submissions, of their relative impotence in the face of the exercise of legislative power by a sovereign Parliament. In doing so, reference was often made to the position of the judiciary in other parts of the British Commonwealth and Britain itself. The Commission regards this as a flawed argument, only partially of assistance. As argued so impressively by Dicey more than a century ago, parliamentary sovereignty and the rule of law work hand in hand and are premised on a political system that is fundamentally representative of all the people subject to that Parliament. This situation never applied in South Africa: not only was representative (and responsible) government conferred effectively only on the white inhabitants of the Union in 1910 (at maximum less than 20 per cent of the population), but South African political and legal life was never characterised by that unwritten sense of ‘fair play’ which is so much a part of the native Westminster tradition.
- 42 In other words, it is not enough for South African lawyers to parade the sovereignty of Parliament as if that alone explained (and excused) their conduct. The social contract which has for so long been the foundation for such sovereignty in the United Kingdom (and to an extent in Canada, Australia and New Zealand) was absent in South Africa, therefore requiring something more by way of response (and responsibility) from the judiciary and the legal profession. The point has been made that judges had a choice, and it has been suggested that it was feasible for them to have heightened their alertness as to government abuse of powers in the power vacuum created by the partially-representative legislature and the absence of basic fairness in the citizen-state relationship.

- 43 It could be argued that the die was cast immediately after Union by a judiciary which acquiesced in segregationist policies, so that by 1948 (and certainly 1960), the courts were locked into the overwhelmingly passive mindset that characterised their judgements in the face of brutal injustices of apartheid. While this may be partially true, the horrific extremes to which Parliament and the executive went to implement apartheid should surely have provided the basis for judges and practitioners, had they wished to do so, to resist such encroachments on basic rights and fairness, using the skills and knowledge which they manifestly possessed and arguing from common-law principles. And if such a concerted stand had moved the government formally to curtail the jurisdiction of the courts, then perhaps the degeneracy of its policies would have been laid bare earlier and more devastatingly.
- 44 Again, those judges who made submissions justified their failure to appear at the hearing on the basis that such 'accounting' would somehow negatively affect their independence and would therefore harm the institution of the judiciary in its current role in South Africa's constitutional democracy. Although the Commission unreservedly accepts the need for the independence of the judiciary, especially under the present constitutional dispensation, it finds this approach extremely disappointing and deeply regrettable for the following reasons:
- a The Commission fails to understand how an appearance before the Commission and the answering of questions on full submissions already made in writing by the most senior and respected judges would somehow undermine such independence. The terms of the invitation to appear (see above) emphasised deliberately that the proceedings were not about establishing guilt or re-opening a particular case or group of cases. In any event, the Commission's brief is limited to the period from 1960 to 1994. An exploration of judicial conduct at that time could hardly be said to impact on the current judiciary operating in such markedly different constitutional circumstances.
 - b Furthermore, it should be quite obvious that the notion of a body such as the Truth and Reconciliation Commission, mandated to call on all South Africans to account for their conduct during apartheid's worst excesses, is a unique event which would be unlikely to create some kind of precedent. If this was to be taken seriously as an argument, then the Judicial Services Commission provided for in the interim and final Constitutions ought also to be impeachable, for the reason that it has general powers to oversee the administration of justice and call wayward judges to account.⁶ It is also quite clear that it was precisely

⁶ See ss 177 and 178 of the 1996 Constitution.

the gruesomeness of atrocities committed during the period under review which warranted the establishment and authority of the Commission, and the elimination of such injustice (at least at the level of official policy) makes the idea of some kind of future investigative and reporting tribunal extraordinarily remote.

- c The failure of the judiciary to appear is all the more to be lamented when the historic significance of the Commission is considered, as well as its envisaged role in the transformation of South African society into a caring, humane and just one. The Commission was thus denied the opportunity to engage in debate with judges as to how the administration of justice could adapt to fulfil the tasks demanded of it in the new legal system; not so as to dictate or bind them in the future, but so as to underline the need urgently to re-evaluate the nature of the judiciary. In some ways, it seems that the judicial non-appearance indicated a reluctance to consider alternatives to the conventions of the past, many of which might be conducive to justice, but which would clearly hinder the attainment of the type of society envisaged by the Constitution.

- 45 In his paper delivered at a meeting of the International Commission of Jurists (ICJ) held in South Africa recently, the Special Rapporteur to the United Nations on the Independence of Judges and Lawyers, Dato Cumaraswamy, considers judicial accountability. He says:

In a democracy, not one single public institution must be exempt from accountability.... However, judicial accountability is not the same as the accountability of the executive or the legislative or any other public institution. This is because of the independence and impartiality expected of the judicial organ.

- 46 The Commission finds that an appearance before the Commission in such special circumstances would have demonstrated accountability and would not have compromised the independence of the judiciary. History will judge the judiciary harshly. Its response to the hearing has again placed the questions of what accountability and independence mean in a constitutional democracy in the public domain for debate.
- 47 The Commission has a good deal of understanding for the 'collegiality' argument, which says that the non-appearance by those judges willing in principle to appear will create greater mutual trust among the 'old order' and the 'new order' judges and so advance the cause of constitutional democracy. However, such benefits, if achieved in this way, are outweighed by the powerful symbolic

effect of the judiciary showing themselves publicly and humbly to be accountable. For this is what the hearing was about and what the Constitution demands of a judiciary that is granted the onerous power of constitutional review. It is required that the judiciary display some sense of being able to balance its necessary and justifiable demand for independence with a measure of accountability to the South African nation it serves.

- 48 The Commission deplores and regrets the almost complete failure of the magistracy to respond to the Commission's invitation, the more so considering the previous lack of formal independence of magistrates and their dismal record as servants of the apartheid state in the past. They and the country lost an opportunity to examine their role in the transition from oppression to democracy.

Institutional Hearing: The Health Sector

■ ETHICS FOR HEALTH PROFESSIONALS

International ethical codes

- 1 Health professionals have an ethical obligation to place the well-being of their patients at the forefront of their professional commitments. From ancient times up until the present day, this has been codified in a number of oaths, codes of conduct and international declarations. In addition, since 1948, many ethical codes and international human rights instruments have been formulated concerning the treatment of patients, detainees, hunger strikers, mental health patients, and on the role of nurses and other related matters.¹
- 2 The greatest drawback of these codes and oaths is the difficulty of monitoring and enforcing compliance with them. Responsibility for upholding these principles is left, by default, to professional organisations and statutory regulatory bodies in each country. This can be problematic if these institutions are themselves under the influence of the state or if they have colluded with or been complicit in violating human rights. The international health care community can help reinforce these standards by putting pressure on countries that violate them, and especially on professional organisations within those countries. However, it is often difficult for the international community to make a significant impact, except over extended periods.

Requirements in South Africa at the time of reporting

- 3 In South Africa, most doctors are expected to take the Hippocratic Oath or the Declaration of Geneva (the modern equivalent of the Hippocratic Oath) upon qualifying (see Appendices 1 and 2). However, some medical schools require their students to take other oaths or develop their own. There is thus no uniformity in the codes of conduct or ethical pledges taken by health professionals. These codes are intended to provide the fundamental principles of the physician's role

¹ These documents can be found in [Ethical Codes and Declarations Relevant to Health Professions](#) by Amnesty International.

as healer, including the obligation to maintain patient/doctor confidentiality and to undertake measures that are in the best interest of the patient. If different schools take different pledges, one cannot expect consistency within the profession.

- 4 Nurses take the 'Nurses' Pledge of Service' (a local adaptation of the Florence Nightingale Pledge) when they graduate. However, the submission of the Democratic Nurses Organisation of South Africa (DENOSA) noted that: "it was confirmed during interviews that an individual could, theoretically, decide not to say the pledge. Also, those who are absent from the ceremony do not take the pledge." The same could obviously apply to graduating doctors. No system ensured or enforced the making of a commitment to ethical practice.
- 5 Mental health professionals are not required to take any sort of pledge or oath on qualifying or registering; their statutory obligations are outlined in the Mental Health Act.² Although the Psychology Board (a sub-section of the South African Medical and Dental Council or SAMDC) has a code of conduct, psychologists are only made aware of this (that is, sent a copy of it) when they register to practice.
- 6 Issues of ethics and human rights are not usually included in the teaching curriculum of psychology masters' degree students. Similarly, there are no uniform guidelines for the teaching of ethics in South African health science faculties. DENOSA had the following to say about the teaching of ethics to nursing students:

Ethics content has always been included in nursing curricula. However, it seems that educators largely did not succeed in teaching this subject so that it had everyday application.

While provision is made for the teaching of ethics in the curriculum, nurses do not seem to identify it as significant to their professional role. In one particular study, it was found that 87 per cent of the research sample indicated that they did not regard the subject Ethos as necessary to their work as registered nurses.

It also appeared from interviews that, in teaching the subject, more attention was given to the history of nursing and etiquette than to ethics and professional conduct, and that students perceived the subject as a list of 'do's and don'ts'.

² This was being reviewed at the time and had been widely criticised as inappropriate and inadequate to the circumstances prevailing in South Africa. (See submissions of the Psychological Society of South Africa and Citizens' Commission on Human Rights).

- 7 During the period under review, ethics was taught on an *ad hoc* basis and, for the most part, students were not examined on these topics. There was, therefore, no uniformity in the way in which health professionals were made aware of, or given guidance on, incorporating issues of medical ethics and human rights into daily practice.
- 8 The SAMDC is responsible for disciplinary action and has a code of conduct and guidelines for ethical practice. The Council does not, however, ensure that all registered health professionals are informed of these. Health professionals who are not interested or do not themselves take the initiative to familiarise themselves with the code of conduct and guidelines may not be aware of their obligations.
- 9 The value of oaths and professional declarations in ensuring a human rights consciousness in clinical practice has been questioned by a variety of sources. If oaths and declarations are merely repeated and signed at the end of a period of training or study, they are unlikely to have any meaningful impact on the life and practice of health professionals. Ethics and human rights need to be incorporated holistically into the overall curriculum to ensure that these principles govern the activities of health professionals.

■ HEALTH WORKERS WITH DUAL OBLIGATIONS

- 10 Many health professionals find themselves in situations in which their primary obligations are not clear. This is particularly true when they are employed to provide health care services for a clientele, organisation or institution whose primary function is *not* the provision of health care. The difficulties and challenges faced by district surgeons illustrate this clearly.

District surgeons

- 11 Of all the health professionals in South Africa, district surgeons working under the apartheid government probably had one of the most difficult jobs in terms of upholding medical standards and human rights. On the one hand, they were under a statutory obligation to provide medical care for prisoners and detainees, to record information on the mental and physical health of inmates and to ensure that proper health conditions existed in terms of basic sanitation, food and general health care. On the other hand, there was (and perhaps still is) great pressure on them to support the police and prison authorities for 'national security' reasons.

- 12 One of the most infamous cases involving inappropriate and negligent care of a detainee by district surgeons was the death of Stephen Bantu Biko.

The death in detention of Stephen Bantu Biko³

Stephen Biko was a prominent leader of the Black Consciousness Movement in the mid-1970s. He was detained by Eastern Cape security police in August 1977 and kept at Walmer police cells in Port Elizabeth. From there, he was taken regularly to security police headquarters for interrogation. The two district surgeons responsible for his medical care were Drs Benjamin Tucker and Ivor Lang.

On 7 September 1977, Stephen Biko sustained a head injury during interrogation, after which he acted strangely and was unco-operative. The doctors who examined him (naked, lying on a mat and manacled to a metal grille) initially disregarded overt signs of neurological injury. They also failed to record his external injuries or insist that he be kept in a more humane environment (at least that he be allowed to wear clothes). When a physician was finally consulted, a lumbar puncture revealing blood-stained cerebrospinal fluid (indicating possible brain damage) was reported as being 'normal', and Biko was returned to the police cells.

Finally, on 11 September 1977, Stephen Biko lapsed into semi-consciousness. Dr Tucker recommended his transfer to a hospital in Port Elizabeth, but the security police refused to allow this. Subsequently, Dr Tucker acquiesced to the police's wish to transfer Biko to Pretoria Central Prison. Stephen Biko was transported 1 200 km to Pretoria on the floor of a landrover. No medical personnel or records accompanied him. A few hours after he arrived in Pretoria, he was seen by district surgeon Dr A van Zyl, who administered a vitamin injection and asked for an intravenous drip to be started.

On 12 September, Stephen Biko died on the floor of a cell in Pretoria Central Prison, naked and alone. The post mortem examination showed brain damage and necrosis, extensive head trauma, disseminated intra-vascular coagulation, renal failure and various external injuries. The medical treatment was subsequently described by a judge of the Supreme Court as having been "callous, lacking any element of compassion, care or humanity".

The magistrate referred the inquest findings to the SAMDC on the grounds that there was a prima facie case of professional misconduct and/or negligence

³ Based on information from the submission to the Commission by Professor Peter Folb.

against the doctors involved. The SAMDC took two and a half years to respond. They initiated a preliminary inquiry in which it was found that the doctors had no case to answer. The full Council ratified this decision.

Despite an outcry from doctors both locally and internationally, the SAMDC adhered to this decision. It was supported by the Medical Association of South Africa (MASA), which even went so far as to imply that those doctors calling for the case to be re-opened were politically motivated.

The reversal of the SAMDC decision took years and was the result of the committed efforts of Drs Ames, Veriava, Jenkins, Mzimane, Wilson and Tobias. These doctors took the issue to the Supreme Court, which ordered the SAMDC to re-examine the case against Drs Tucker and Lang. As a result of this, a disciplinary enquiry was held in 1985, eight years after Stephen Biko's death. Dr Tucker was found guilty of improper and disgraceful conduct on three counts and was struck off the role of medical practitioners (although he was reinstated some years later). Dr Lang was found guilty of improper conduct on five counts and was suspended for three months (ironically, this suspension was conditionally suspended for two years and so had no impact on Dr Lang's practice of medicine). Dr Lang continued to be employed as a district surgeon by the Department of Health and was, in fact, promoted to chief district surgeon in Port Elizabeth in Dr Tucker's place.

- 13 The evidence available to the Commission suggests that most district surgeons were not directly involved in committing gross violations of human rights during the period under review. Their most common offence was a failure to carry out their duties within internationally accepted guidelines of medical ethics and human rights. All these points are starkly illustrated by the Steve Biko story. The doctors failed to:
- a maintain patient-doctor confidentiality norms;
 - b treat their patient with dignity and respect;
 - c examine the patient thoroughly;
 - d record and report injuries accurately;
 - e diagnose illnesses and prescribe appropriate medication;
 - f register complaints (particularly pertaining to assault and torture).

- 14 On many occasions, district surgeons examined patients with security officers or prison warders in the room, which may have inhibited patients from disclosing abuse or torture by the police. This practice also reinforced the belief of prisoners that district surgeons collaborated with the authorities. District surgeons breached patient-doctor confidentiality by allowing third parties (police or prison authorities) automatic access to patients' files without informing the patients concerned or obtaining their consent. International standards require a doctor to inform the patient *before* he or she conducts an examination if the information in the medical records will be released. Finally, a number of deponents (generally detainees) told the Commission that they did not receive what they believed to be appropriate care from district surgeons.⁴
- 15 These circumstances were aggravated by the fact that most district surgeons were white, while the majority of the detainees were black. Because white and black people had for years been separated by apartheid policies, there was a strained relationship and a lack of mutual trust and understanding between doctor and patient.
- 16 Many district surgeons also claimed that they did not know they could override the orders or wishes of prison warders or police on medical matters - for example, by not releasing information or by insisting that warders leave the room during examinations.⁵ Finally, where a district surgeon *did* take a stand to uphold the human rights of his or her patients, he or she received little or no official support from the profession or the Department of Health.
- 17 At the height of the state of emergency in the mid-1980s, there was a flood of detainees into the prisons. The increased workload pushed district surgeons into unprofessional medical practices – such as failing to examine detainees properly, failing to insist on private examinations and failing to investigate complaints by their patients. While a number of independent sources reported evidence of almost routine torture and assault of detainees, district surgeons, with only one exception, failed to report or speak out about these violations.
- 18 While it is easy to criticise district surgeons, it must also be appreciated that the conditions under which they had to work made it difficult for them to uphold human rights. They were given no specific training for work in the prisons, no continuing medical education and no independent avenues to report abuses. They were generally isolated from the rest of the profession and sometimes

4 Since the primary mandate of the Commission was to look at gross human rights violations, the instances of professional misconduct are limited to those mentioned in conjunction with a gross human rights violation. Nonetheless, there are still numerous allegations of misconduct.

5 Rayner, Mary (1987). Turning a Blind Eye, pp 29-31, 53-54.

actively ostracised. It is, thus, perhaps not surprising that they adopted the culture of the police and prison officials from whom they received affirmation and support. The Department of Health submission said:

[District Surgeons had] a firm belief that the detainees were the enemy of the State and that it was the right thing to do to assist the police in getting the information out of the detainees, as they were trying to overthrow the government. The country was fundamentally racist and this included many district surgeons. The ideology was such that it was regarded as completely normal not to give black people the same services as whites and to treat black people as second class citizens.

Lack of support from institutional bodies

19 Institutional bodies such as the Department of Health, the SAMDC and the MASA contributed indirectly to breaches of ethics by district surgeons. None of them took responsibility for the inadequacies of the system in which these doctors operated. The Department of Health was responsible for ensuring that district surgeons (who were, after all, employees of the Department of Health) were aware of their rights and responsibilities within the prison and police systems. It should have provided practical guidelines for action by district surgeons faced with situations in which violations of ethical conduct seemed inevitable. The SAMDC was supposedly responsible for dealing with those guilty of professional misconduct and for educational guidelines and ethics. There are well-documented cases in which the SAMDC failed to take proper action on professional misconduct. Both the SAMDC and the MASA gave little support to those who upheld human rights, thus discouraging health professionals from challenging the system. None of these organisations provided guidelines to assist district surgeons in dealing with adverse situations, in which it was almost impossible to treat detainees properly.

The death in detention of Ms Elda Bani⁶

Ms Elda Bani, a fifty-year-old political activist, was detained in 1986 in North End Prison, Port Elizabeth. She suffered from severe insulin-dependent diabetes, which she reported to the medical staff at the prison. Initially, she was able to treat herself with medication she had brought into prison but, when her medication supply ran out, she received no treatment from the district surgeon. In spite of her condition, she was made to eat normal prison food at inappropriate times (for example, supper at 16h30 with no further meals until breakfast the

⁶ This is a summary of the case presented at the Health Sector hearing on 17 June 1997 by the Health and Human Rights Project.

next morning). The district surgeon made no attempt to intervene, although it should have been obvious to a doctor that such long gaps between meals were quite inappropriate for a diabetic.

Inevitably, Ms Bani's condition deteriorated as her untreated diabetes worsened. She became confused and incontinent. Her cellmates reported this, and Ms Bani was taken away, they assumed, to hospital. When she returned, however, she reported that she had not been taken to hospital, but had been beaten by the police. Her cellmates saw blood on her clothes and injuries on her back. Her condition continued to deteriorate and she eventually lapsed into a hyperglycaemic coma. She died shortly afterwards of an entirely preventable and treatable condition.

Examples of misconduct among district surgeons

- 20 There are numerous accounts of district surgeons who failed to fulfil their moral and ethical duties as doctors. For example:
- a A district surgeon declined to refer to a hospital a detainee with three gunshot wounds in his groin, or even to apply disinfectant or a dressing because she believed it was more important for the detainee to assist the police with their enquiries.
 - b A district surgeon did not ask a youth whose teeth had been broken or allegedly extracted by a security police officer how he had acquired this injury.
 - c A district surgeon found no marks or injuries on a former detainee, although another district surgeon had recorded extensive injuries when he examined the same detainee.
 - d A district surgeon was allegedly requested by the security police to advise them as to whether a detainee was fit to undergo further electric shock torture.
 - e A district surgeon asked the security police questions about the health of a detainee, instead of asking the detainee himself.
 - f A district surgeon performed perfunctory examinations or did not inquire into the cause of injuries suffered by detainees.
 - g A district surgeon was personally acquainted with members of the interrogation squad.

A doctor who exposed the system

In September 1985, Dr Wendy Orr lodged an urgent application with the Port Elizabeth Supreme Court for an interdict restraining the police from assaulting detainees. Since the declaration of the state of emergency, Dr Orr had documented 286 cases concerning detainees who complained of police assault during questioning. In her affidavit, she reported that the police seemed to believe they were immune to proceedings against them and that none of the complaints of torture or assault was ever investigated. Dr Orr told the Court that she felt "morally and professionally bound"⁷ to seek legal intervention. As a result of her action, the requested relief was granted. She was, however, barred from seeing detainees; her telephone calls were monitored; she felt ostracised by some of her office colleagues and her duties as a district surgeon were reduced to almost nil. She subsequently resigned and began work at the Alexandra Health Centre.

It is interesting to note that the Security Branch of the South African Police (SAP) instituted strict security clearances for all district surgeons subsequent to Dr Orr's revelations – further evidence of the influence and involvement of the SAP in the work and conduct of district surgeons.⁸

- 21 Health professionals who are employed in situations in which they have dual loyalties are, because they do not enjoy full independence in making or implementing decisions, at risk of becoming involved in overt or covert abuses of the human rights of their patients. It is all too easy for health professionals who are not particularly vigilant or well-informed to assume the culture of the organisation for which they work, rather than maintaining independence and putting the needs and rights of patients above those of the organisation. Appropriate measures are needed to prevent or pre-empt the moral and ethical dilemmas that may arise for health professionals faced with the (often conflicting) needs of their patients and expectations of their employers. This issue needs careful consideration.

■ HISTORICAL OVERVIEW OF HEALTH CARE IN SOUTH AFRICA

- 22 While the Act establishing the Commission directed it to examine the years 1960 to 1994, many of the events under scrutiny by the Commission can only be understood adequately within the context of the history and events leading up to this period.

⁷ *Wendy Orr and others v the Minister of Law and Order and Others*, First Applicant's Founding Affidavit, page 37.

⁸ Rayner, Mary (1987). *Turning a Blind Eye*, p78; Minutes of *Afdelingsbevelvoederskonferensie, Veiligheidshoofkantoor*, Pretoria, 27-28 Januarie 1986, page 13, last paragraph.; Vernon, Ken. 'When the jailer came it meant interrogation'. *The Star*, 29 September 1985.

- 23 Although the Union Constitution of 1910 gave control of the hospitals to the provinces, there were no specific provisions for the delivery of health services until the Public Health Act was passed in 1919⁹. The Act created a Department of Public Health, but left hospitals under provincial control. It also gave local authorities responsibility for the control of infectious diseases and environmental sanitation.¹⁰ This led to a fragmented health system.
- 24 In 1942, the National Health Services Commission, headed by Dr Henry Gluckman, found that there were 2 000 active medical practitioners in South Africa. More than half of them (about 1 100) practised in urban areas where only 28.2 per cent of the population lived. The doctor to population ratios ranged from 1:5 000 in the rural areas (where mainly black people lived) to 1:380 for urban areas (where mainly white people lived). The infant mortality rate for whites was 50 per 1 000 live births; for Africans, it was estimated to have been between 150 and 600 per 1 000 live births (it was impossible to arrive at accurate figures due to inconsistencies in reporting).¹¹
- 25 The Gluckman Commission report was published in 1945 and contained significant recommendations, including proposals that access to health care for all be considered a right rather than a privilege and that the state assume responsibility for the provision of health services.¹² Ironically, although none of these recommendations were implemented then, many constitute the core of the transformation of the health care system today.
- 26 It is important to note that racial discrimination and the lack of appropriate health care provision predated the National Party (NP) and formal apartheid. Indeed, the effective rejection of the recommendations of the Gluckman Commission took place before the NP was voted into power. However, during its first decade in power, the NP made no significant changes in the provision of public health care, except to reduce expenditure on public health on which mainly black people were dependent: expenditure was, for example, reduced by 8 per cent for the period 1950-55.¹³ Hence, by 1960, the health care of black South Africans had been prejudiced by years of unequal allocation of resources – based on the assumption that ‘natives’ required less sophisticated health care than whites and a complete lack of coherence in or centralisation of health policy development.

9 Pillay, *The Politics of Exclusion: Health Policy in South Africa 1910-1990*, page 23.

10 Pillay, page 24.

11 Pillay, page 55.

12 Pillay, page 80.

13 Compared to the previous five years. Pillay, page 121.

27 The 1960s saw the replacement of apartheid rhetoric with concrete apartheid programmes aimed at enforcing racially separate development and the establishment of the homelands. Homeland health services were appalling. This is not always apparent from government-supplied health indicators, as homeland health figures were usually excluded from the statistics.¹⁴ In fact, official statistics often gave the impression that the health situation was improving in South Africa. However, both in the homelands and in the Republic, segregated health care services seriously compromised the health of disadvantaged communities.

■ STATE HEALTH ORGANISATIONS

The Department of Health¹⁵

28 The Department of Health was the arm of the national government responsible for public health services. It provided for care at the local, provincial and national levels, allocated state funds, drew up regulations and appointed senior officials to the hospitals. During the years under review, the Department's policies appear to have been driven by the political objectives of the national government, rather than a desire to ensure the well-being of all South Africans. The Department helped develop health care legislation that discriminated against people according to race. It enforced segregation of health care facilities and allocated funds in a racially biased way. These policies shaped, and continue to influence, health care delivery and the health of South Africans.

29 Inequities in health services can, to a significant degree, be attributed to the Department of Health as the body responsible for state-run hospitals. Most hospitals and ambulances were assigned exclusively to specific racial groups. Where hospitals served more than one group, separate wards were allocated to different racial groups. Generally, the facilities available to whites were far superior to those available to blacks in terms of technology, sanitary conditions, supplies and the number of patients per health care worker. For example, at the King Edward VIII Hospital in Durban, which served African patients, conditions were appalling. At times, the obstetrics and gynaecology ward would operate at 200 per cent capacity. Women who had just given birth, or who were about to give birth, lay on mattresses on the floor and had to share five toilets with up to 140 other patients.¹⁶

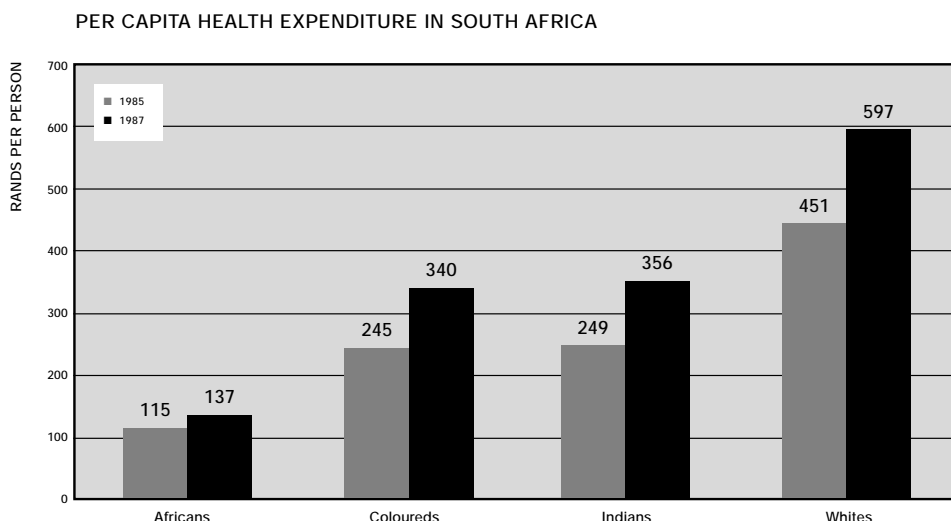
14 American Association for the Advancement of Science, *Apartheid Medicine*, pp 44-45.

15 The Department of Health was called various names during the period under review but will be referred to throughout this chapter simply as the Department of Health.

16 Interview by Sheila Roquitte with Professor Green-Thompson, former head of department for Obstetrics and Gynaecology at King Edward VIII Hospital, on 16 April 1997.

- 30 The practice of segregating facilities was particularly serious in emergencies. If an ambulance of the 'wrong colour' arrived at the scene of an accident, the driver would leave, and another ambulance would have to be summoned. Even if a 'white' ambulance was closer to the scene of an accident in which a black person was injured, an ambulance from further away would be summoned – regardless of the seriousness of the emergency or the threat to the life of the patient.
- 31 Between 1960 and 1994, the Department of Health failed to use its resources to provide the best possible public health service. Probably the greatest problem in the health sector was the maldistribution of resources. Because of apartheid restrictions on where people could live and work, it was very easy for the Department to ensure that the distribution of resources favoured white people. By far the largest proportion of government funds was spent on the white population, despite the endemic poverty and socio-economic deprivation of the majority black population. In 1985, for example, annual *per capita* health expenditure according to race was R451 for white people, R249 for Indian people, R245 for coloured people and R115 for African people (see Figure 1). Since black hospitals were regularly overcrowded and white hospitals underutilised, the funding should have been redistributed to provide better overall care. The silence of the Department about the effects of socio-economic conditions on the general health of the population was deafening.

Figure 1



Source: Department of Health submission to the Truth and Reconciliation Commission.

32 According to the Department of Health today:

The exact effects of segregation and inequitable distribution of health resources based on race are impossible to calculate in terms of exact morbidity and mortality. However, this, together with the indignity of racially based services, resulted in abuse that cannot be allowed to be repeated.

33 The Department was also responsible for the regulations that governed conditions of service and the appointment of personnel in hospitals. Compensation for doctors varied by race, and salary differentials persisted into the 1980s. Even when parity in salaries was achieved, differences in total compensation remained, including medical aid packages, amount of leave, housing subsidies, and travel allowances.

34 The appointment of doctors to government hospitals had to be approved by the Department of Health. Often people were denied positions because of their political activities.¹⁷ The Department appointed the hospital superintendent, who enforced the policies in that hospital. This was significant, as many of the racist provisions enforced by the superintendent were not part of any law, but simply reflected a desire to conform to the ideology of the state.

35 The Department did little to prevent police from obtaining medical records from hospitals or clinics without the consent of patients. The police used these files to identify 'anti-apartheid protesters', which made many people afraid to go to a government hospital to receive care, as they feared arrest. The Department did not take issue with inhumane practices, such as handcuffing or shackling patients to beds.

The South African Medical Services

36 The South African Medical Services (SAMS) was the medical service of the South African Defence Force (SADF) – now the South African National Defence Force (SANDF). The SAMS was formed in 1979 as a distinct and separate section of the SADF. It was responsible for providing health services to members of the SADF (army, navy and airforce) and some health services in the former homelands and parts of Namibia and Angola for certain periods.

¹⁷ For example, Dr Green-Thompson was recommended for appointment as professor and head of a clinical department at University of Witwatersrand by a large majority. However, the appointment was prevented by the Transvaal Provincial Administration. It was believed that this was due to his activities as a former student leader. (Information from the University of Witwatersrand's submission to the Commission).

- 37 The SAMS included doctors, nurses, psychologists and non-professional, military-trained 'medics'. These individuals were either conscripts or permanent members of the SADF and had to be trained and fully incorporated into the doctrine and standing operational procedures of the combat forces. This made the operation of the SAMS quite different from civilian care.
- 38 Military health professionals had a particularly difficult time in upholding international standards of medical ethics and human rights. While they were supposed to follow the same ethical codes as civilian medical workers, they were, at the same time, required to follow orders given by superiors. This created an atmosphere of dual loyalty for these individuals.

Experiences of a military medic¹⁸

Sean Callaghan had to choose the section of the military in which he wished to serve at the age of fifteen when he completed his papers for military conscription. At the time, he chose to be a military medic so he could "help people rather than kill them". Two years later, he found himself working as a medic in the townships and on the Namibian and Angolan border.

The first time that many of the medics performed any medical procedures was in black hospitals because "frankly it didn't matter if we made a mistake because they were black people". He very quickly learned that "the only way to cope with the situation was to switch off my emotions immediately, not to feel anything for anybody, not to try and fit into any kind of humane circumstance; but just to be a cold machine that did what I was trained to do."

In some camps, members of the SADF were given monetary incentives to carry out military objectives. At the Koevoet camp, they were paid for killing and recovering weapons from the enemy. This was a great motivating factor as the men could double or triple their incomes. In one instance, an officer became so frustrated when he could not find a firearm in a patient's possession (which would have meant extra money) that he shot the patient through the head while Sean was attending to the patient's wounds. John Deegan, the officer concerned, confirmed this in a statement to the Commission.

Torture was used during interrogation to extract information about the enemy and the whereabouts of arms caches, as such information could help increase the men's incomes. Some of the procedures used included electric

¹⁸ Based on the public testimony of Sean Callaghan at the Health Sector Hearing, 17 June 1997.

shock around the genitals and pouring boiling water over the chest and genitals. Medics were expected to treat the resultant injuries.

Prisoners of war were shot at point blank range and buried once enough information had been extracted from them. Bodies were often tied to Casspirs¹⁹, and the men would drive around with them for a week with their skin being ripped off. This was done to intimidate prisoners, and to coerce them into identifying the bodies and disclosing the position of the deceased in the command structure, or face being one of the next bodies to be dragged by the Casspir.

There was virtually no psychological help for the men to deal with the tragedies that they witnessed. They often drank heavily or took drugs – one of the only ways to cope with the adverse circumstances. Suicides occurred frequently, as national servicemen could not take the pressures of constantly being in combat situations or so far away from their families. When Sean did go to the local psychiatrist for help, he was told to “grow up and carry on” because there was nothing wrong with him.

Once the men completed their military service, there was no debriefing or assistance to help them reintegrate into society. Although, according to the SAMS, Project Curamus was launched on 2 April 1990 to assist conscripts and permanent force members ‘disabled’ in the course of duty, the project seems to have focused primarily on physical disabilities, not psychological problems. After completing his military service, Sean suffered from post-traumatic stress disorder for ten years.

- 39 It is apparent from this account that military medics were forced to violate international and local standards of medical professional conduct and human rights and that many were personally traumatised by their experiences. Many of them have had great difficulty reintegrating into and becoming productive members of civilian society.
- 40 As yet, relatively little is known about the human rights violations committed by health professionals in the military. The SAMS submission to the Commission focused on the history, functions and administrative structure of the service, rather than considering any possible involvement in gross human rights violations. Many questions were deferred because they related to supposedly ‘classified’ (secret) operations. For example, the SAMS submission referred to three special projects undertaken by the Psychology Directorate. The reference was followed by the

¹⁹ Armoured personnel carriers, designed to be landmine-proof. Casspirs were developed for use in Namibia but were later used in domestic situations.

disclaimer: "As these projects have national strategic and security implications, they are not discussed in detail in this non-restricted document." However, the little information that the Commission does have on the violation of human rights by the SAMS suggests that military objectives often took precedence over medical objectives. In June and July 1998, a special hearing on the SADF's chemical and biological warfare programme uncovered new information about the extent of involvement by the medical profession in human rights violations.²⁰

- 41 The Commission investigated a number of allegations. There were reports of a particular psychologist who used aversion therapy and electric shocks on homosexual military men as part of a treatment for their 'gayness'. Another doctor allegedly helped the military develop chemical weapons and truth serum to be used in questioning.

Experiences of a doctor conscripted to the SADF²¹

Before beginning his two years of National Service in the mid-1980s, a young conscript had qualified as a medical doctor. On entering the military, he applied to work in the department of psychiatry at a military hospital because he believed that he could use his time most productively there. He worked in psychiatry for six months and was subsequently sent to Oshakati for three months.

While in South West Africa, he observed many irregularities in the provision of medical care. When he arrived at Oshakati, he was treated differently to the other doctors and was accused of having been placed there as a 'government spy for the Surgeon-General'. Later, he discovered that the other three doctors had been 'handpicked' by the commandant, who said that "he did not want me in the camp and that if I ever breathed a word about anything I saw or caused any 'trouble', I would 'disappear without trace'".

He said that some of the obstacles and breaches in medical ethics he experienced included:

- a psychologist prescribing a schedule five anti-psychotic drug that only a medical doctor is permitted to prescribe;
- the commandant and his deputy changing scripts for medication and discharging patients without consulting the attending doctor;

²⁰ This hearing is reported on elsewhere in the report.

²¹ This person made a statement to the Commission but wished to remain anonymous.

- the commandant's refusal to supply the necessary medication to a patient;
- being prevented from treating patients who were members of the local community;
- disregard of his recommendations for treatment of a patient who had injuries that were thought to have been inflicted by security police. The patient subsequently disappeared;
- when diagnosing post-traumatic stress disorder, he was told that no such condition existed.

He wrote a report to the Surgeon-General describing these situations. The head of the Department of Psychiatry promised to give his report to the Surgeon-General but never did so.

- 42 The SAMS was directly and indirectly responsible for putting health workers in positions in which it was almost impossible to uphold international ethical and professional standards, as strategic needs were given priority over the health of the patients treated by military medical personnel. In addition, the SAMS did not acknowledge that the experience of combat situations could result in significant mental distress and did not provide adequate debriefing and counselling services for those of its members (either permanent force or conscripted) who were suffering in this way.
- 43 The panel to which the SAMS made its presentation felt strongly that its submission was evasive, that it failed to consider the very real ethical challenges faced by health professionals in the military and that it made no attempt to consider the possible involvement of health professionals in human rights abuses, either through acts of omission or commission. The quality of the SAMS responses to the very extensive and probing list of questions posed at the hearing merely entrenched this perception.
- 44 The Commission made special attempts to determine the involvement of the SAMS (and particularly health professionals employed by the SAMS) in the development of and research into weapons for use in biological and chemical warfare. The matter proved extremely difficult to investigate and was not covered in the SAMS submission. However, in an interview with *The Argus* newspaper dated 2 March 1995, General Knobel was quoted as saying that Project B, a research project on chemical warfare, began in the late 1970s under the leadership

of Dr Wouter Basson (a medical doctor) of Seventh Medical Battalion. This project was allegedly closed down in 1993. The special hearing on chemical and biological warfare in June and July 1998 (referred to above) uncovered some of the activities of this project. At the time of the hearing, Dr Basson was facing charges of (amongst other things) conspiracy to commit murder, fraud involving millions of rands and dealing in the drug, 'ecstasy'. He was also still registered with the SAMDC as a cardiologist and a practitioner 'in good standing'.

- 45 The Commission traced the following allegations about the use of biological and chemical weapons by the SADF. It was assumed that these were developed under the auspices of Project B:
- a A paralysing gas was allegedly used in May 1978 in the massacre at Kassinga, Angola.²²
 - b The SADF allegedly used chemicals, napalm and defoliants in the Rustenburg area in August 1978 in an attempt to flush out a detachment of Umkhonto weSizwe (MK) guerrilla fighters.²³
 - c In an attack on Frelimo troops near the South African border on 16 January 1992, a gas similar to teargas (causing pain and irritation) was allegedly sprayed from reconnaissance aeroplanes.²⁴

■ MISUSE OF MEDICAL AND SCIENTIFIC INFORMATION²⁵

- 46 Medical expertise and information should be used to heal patients and develop new methods of prevention, treatment and cure. They can, however, be used against people in destructive ways. Many people view scientific data as 'fact', although, taken out of context or misrepresented, such data can be used for unethical purposes and have adverse outcomes.
- 47 Submissions and amnesty applications forwarded to the Commission, together with court evidence and secondary sources, gave numerous indications that health professionals were involved in committing human rights abuses and used their

22 'Report of the Kassinga attack prepared by a joint UNHCR/WHO mission on 30 May 1978', reproduced as Annexure V in UN document 13473 of 27 July 1979.

23 Report received from the Institute van Zuidelijk Afrika, Netherlands, 1978.

24 See report of General Pierre Steyn to President FW de Klerk, 20 December 1992.

25 This section was based on information from the submissions by Dr David Klatzow, Professor Michael Simpson, the Health and Human Rights Project, and the Independent Medico-Legal Unit.

medical knowledge directly or indirectly to harm others. Some professionals were alleged to have participated in developing more effective methods of torture and interrogation, or to have given advice on how to use chemicals to make weapons or to poison people. Some also used their knowledge to design specialised weapons. Others, especially forensic specialists, used their expertise to falsify information or to disguise the cause of death in order to exonerate certain persons (often the Security Police) from blame.

Misuse of medical expertise

- 48 Doctors and mental health professionals were alleged to have advised torturers on how to identify potential victims, break down their resistance and exploit their vulnerabilities in order to achieve the goals of the state. It was also alleged that they helped assess the vulnerabilities of victims and prescribed drugs or psychological procedures to weaken detainees before torture was administered. They also recommended the kind of torture that would be most effective. In addition, some doctors were alleged to have advised torturers during interrogations as to when victims were near breaking point and how much more pain could be withstood.
- 49 Doctors are alleged to have given advice to police on lethal chemical formulas that were undetectable or difficult to trace, and on ways to disguise torture methods. In the case of Mr Siphwe Mthimkulu, the victim became very ill after his release from detention. Upon further investigation, it was found that he had been poisoned with thallium, an odourless, tasteless poison whose effects are delayed after ingestion.²⁶ Siphwe Mthimkulu disappeared in the year after he was released from prison. Many people believe that only a medical professional or chemical expert would have had the knowledge to advise the police to use such a poison.
- 50 Mr Amos Dyantyi told the Commission that he was severely tortured on the day of his detention in 1985. He almost suffocated when his torturers put a tube over his head. He was electrocuted by having electrodes inserted into his anus and suffered excruciating pain when a mechanical piece of equipment (like a jack-hammer) was forcefully pushed into his stomach. The police were so concerned about his condition that a part-time district surgeon was called in to see him. Before he was taken to the hospital, the doctor allegedly told the Security Branch police to force porridge into his nose so that it would look as if he had suffocated on the porridge.

²⁶ *Affidavit of Dr Frances Ames.*

- 51 It is also believed that doctors advised interrogators how to administer electric shock. Initially, it was administered through clips or wires. However, the clips left marks that were detectable under a microscope. Professor Simpson, who worked extensively with detainees, reported that, once it became widely known that detection of electric shock was possible, there was a change in the way in which detainees described the administration of electric shock. Torturers poured water over the victim and administered the current over a larger area of the body. Because the area through which the current penetrated was larger, this method left no marks. Again, it is believed that it was health professionals who advised torturers on this less detectable method of electric shock. Professor Simpson noted that, once it was discovered that electric shock could *still* be detected by a blood test, electric shock was used less frequently.
- 52 Doctors were also used by the SADF to develop weapons such as letter bombs and silencers for guns.²⁷ In a recent amnesty application, a perpetrator admitted to working for an SADF front company which, posing as a commercial chemical company, developed weapons such as letter bombs and special weapons that could deliver small amounts of lethal chemicals. This application named several medical doctors who were involved in this operation.²⁸

Misrepresentation of forensic information

- 53 Forensic information was misused in various ways. Some forensic pathologists omitted crucial information or falsified *post mortem* reports to cover up the cause of death. There were many cases where doctors misrepresented forensic evidence and findings in court in order to absolve the state of allegations of abuse or criminal activity. This required the collusion of police, lawyers, forensic experts, district surgeons and other health professionals and magistrates and judges. The misuse and manipulation of specialised knowledge is illustrated in a number of case studies selected from submissions to the Commission.

Accidental or deliberate?

Ashley Kriel was shot in 1987 while allegedly resisting arrest and engaging in a scuffle with a security policeman. The police version of events was that, in the course of the arrest, Kriel produced a small .22 pistol. Jeffrey Benzien, the senior police officer involved in the arrest, tried to take the gun away from him. A scuffle ensued during which Ashley Kriel was fatally injured by a

27 Special hearing on the SADF chemical and biological warfare programme.

28 The information contained in this and other amnesty applications remains confidential until the end of the life of the Commission. The applicant in question applied for amnesty for no particular incident, but noted that, if the weapons had been used as intended, they would have caused numerous deaths and injuries (AM6490/97).

bullet wound in the back, fired from his own pistol. The evidence presented by the state forensic experts supported this version of events.

On an examination of the facts, however, numerous inconsistencies are evident. These were not presented to the magistrate by the state witnesses, but were highlighted by the expert forensic witness testifying on behalf of Ashley Kriel's family. The two assessors sitting with the magistrate, both of whom were forensic experts, also failed to point out the inconsistencies or take them into consideration. The outcome of the inquest was a 'no blame' verdict.

Some of the inconsistencies were:

- The marks around both of Ashley's wrists indicated that he had been handcuffed before his death. If the handcuffs were removed, why was this done? If they were not, how could Ashley have engaged in a fight with Benzien, and how could he have shot himself in the back?*
- The size and nature of the entrance wound in Ashley's back was consistent with a direct contact wound; in fact, stigmata around the entrance to the wound indicated that the muzzle of the revolver was held directly against the skin. However, the size and nature of the holes in the clothing that he was wearing at the time (a T-shirt and track suit top) were inconsistent with a contact shot.*

54 There are some well-known examples of cases where doctors reported false causes of death. These include the numerous detainees who supposedly died from such causes as slipping on a bar of soap, dying of an epileptic seizure where no prior history of epilepsy existed, having a heart attack without a history of heart disease, choking on food or suffocating or committing suicide. In addition, doctors were known to give expert advice on the mental health of deceased prisoners, or to conclude that someone had committed suicide because of mental instability, without ever having met the person involved. This type of evidence was advanced at the inquest into the death of Neil Aggett.

55 Expert forensic evidence of gun shot wounds was also used to determine the distance between the victim and the killer.

Determining shooting distance

In 1986, seven young men were killed in a police ambush in Gugulethu. The police evidence was that all seven were shot from some distance. No contrary evidence was produced by the state experts. Independent forensic experts,

however, found evidence of very close range 'finishing-off' shots on the bodies of many of the seven victims. One of the victims had, in fact, been shot in the jaw at such close range that there was almost no dispersal of the shotgun pellets, and the felt wad (which contains the pellets) was embedded in his brain. This evidence was presented at the second inquest into the deaths.

Hence, the police version that this person was shot from a distance of a few metres cannot be true. Again, however, a collusion of silence and a tacit agreement to turn a blind eye by lawyers, state forensic experts, police and the magistrate resulted in a 'no blame' verdict.

- 56 Professor Michael Simpson told the Commission that, on one occasion, a doctor gave evidence on the exact time of death of a detainee in order to help absolve a Security Police officer of suspicion; although, using the available technology, it would have been impossible to determine time of death with such precision. As it turned out, the expert had felt the victim's forehead and pronounced the time of death as having been exactly twenty minutes earlier. A professor of forensic medicine who was acting as an assessor in that case failed to comment on this unusual method of determining the time of death.

Mistake or complicity?²⁹

April Makhwenkwe Tariwe was killed in KwaZulu-Natal on 19 April 1992. The post mortem was performed by a district surgeon, Dr A Nhlanhla, who reported the cause of death as "fractured base of skull" with mention of a "laceration on the upper lip". There was no indication in the post mortem report that the deceased had been shot. The district surgeon expressed the opinion that the deceased may have died in a motor car accident.

Subsequently, a member of an Inkatha Freedom Party (IFP) hit squad who had been present at the incident (a 'drive-by' shooting) confessed to the Investigative Task Unit that Mr Tariwe had been shot by a member of his squad. This new information and the post mortem report were obviously contradictory, and the Investigative Task Unit arranged for an exhumation.

At the second autopsy, a bullet entrance wound was found in the facial bones below the victim's nose, and the bullet was found still lodged in the victim's skull. Either the district surgeon made a mistake or he had been complicit in covering up a crime. If Dr Nhlanhla's evidence had simply been accepted, a gross miscarriage of justice might have ensued.³⁰

²⁹ This case comes from the Independent Medico-Legal Unit submission.

³⁰ At the time of reporting, this matter was the subject of a disciplinary enquiry by the SAMDC.

57 These examples demonstrate some of ways in which medical and scientific information was misused or abused. It is difficult to determine the culpability of doctors in these situations, as the evidence may have been destroyed or the doctor could claim to have made a misdiagnosis or an honest mistake. However, there is enough evidence to indicate that these misrepresentations occurred frequently.³¹

■ MEDICAL SCHOOLS

58 Medical schools played a significant role in perpetuating human rights abuses. Black people were systematically prevented from obtaining training in the health sciences and, even where this was allowed or provided for, received an inferior quality of education to that of white students. Medical schools failed to teach ethics and human rights. Professors in medical schools held dual appointments with both the state and the medical schools, leaving them vulnerable as health professionals with dual obligations. Finally, with a few exceptions, medical faculties did not speak out about the unethical nature of apartheid medicine and its adverse effects on training and patient care.

Admission for training in the health sciences

59 Opportunities for black South Africans to become health care professionals were extremely limited in the case of doctors and mental health professionals; although far less so for nurses. Before World War II, no black doctors were trained in South Africa. None of the medical schools in South Africa would admit black students and all black doctors received their training overseas. There does not appear to have been any statute preventing medical schools from accepting black students; it simply did not happen. Some of the schools claimed that it was because they did not have the facilities (such as separate residences) in which to accommodate black students.

60 The outbreak of World War II ended overseas training. From that time, a few black students were admitted to the University of Witwatersrand (Wits) and the University of Cape Town (UCT). However, very few black doctors were trained until 1951, when the University of Natal in Durban (UND) Medical School was opened exclusively for black students.

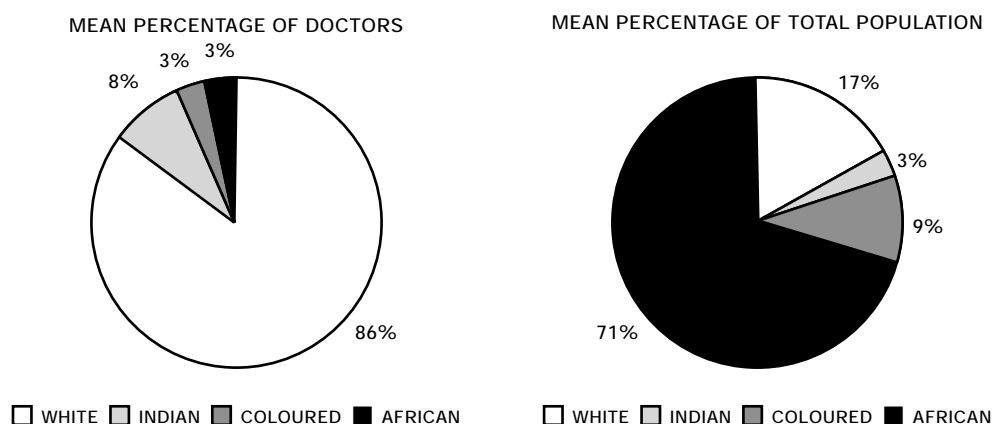
61 In 1959, the University Extension Act was passed, requiring black students to obtain ministerial consent before they could attend a white university. This made it very difficult for black students to enter any medical school other than UND

³¹ Dr Gluckman, who served as a state pathologist for several years, came forward with files he had on more than 200 cases in which pathologists or district surgeons had falsified or altered the *post mortem* reports. Dr Gluckman had kept the medical records that documented the contradictions in these cases.

and, in turn, for many aspiring medical students living outside Natal (as it was then) to attend medical school. UND was far from their homes and many did not have the financial resources to pay accommodation and travel expenses and academic fees. A small number were, however, able to attend white universities if they could convince the Education Ministry that extenuating circumstances prevented them from attending UND. The number of black medical students increased from the early 1980s, after the Medical University of Southern Africa (MEDUNSA) was established. This was part of the apartheid plan to keep blacks (especially Africans) out of white universities, while at the same time ensuring a supply of black doctors to care for the black population.

62 The lost opportunities that resulted from the University Extension Act are impossible to quantify, although one can say with certainty that numerous black people were kept out of the medical profession. Between 1968 and 1977, for example, 86 per cent of all newly qualified doctors were white, while white people comprised less than 20 per cent of the population. By contrast, 3 per cent of the new doctors were African, while Africans constituted 71 per cent of the population (see Figure 2).³²

Figure 2. Racial composition of doctors compared to the racial composition of the population



Note: Figures are the mean average percentages for 1968-1977.

Source: Data from the Health and Human Rights Project submission to the Commission, p87.

³² Submissions by the Department of Health and the Health and Human Rights Project.

Disparities in the education of black and white medical students

63 Although the various South African medical schools were quite different from one another, they displayed strong similarities in their patterns of racism and the often overtly degrading treatment they inflicted on black medical students.³³ In general, black students were excluded from sports facilities and most social events. Accommodation was not usually offered to black students, which meant that they had to spend much time and money commuting. Where accommodation was made available, it was far inferior to that available to their fellow white students. Tearooms and changing rooms at hospitals were also segregated, and facilities for black students and professionals were inferior.

Personal experiences of Dr Ahmed Moosa at the University of Cape Town

There were no African students on the UCT Campus [when Dr Moosa attended medical school]. The only African people working there were people who were employed as labourers and as assistants maybe in some of the laboratories.

All the residences were closed [to black students]. You couldn't stay on the campus no matter where you lived. The clubs – all academic or social clubs – were closed ... There were sports facilities, but those were segregated.

This lack of integration continued throughout our medical school years ... In anatomy, in the second year of study ... all the black students were separated into a smaller lab.

In third year, the autopsies that we attended ... they would only show black bodies if there was a mixed class. If there was a white corpse that had an interesting pathology, these corpses were eviscerated in an anteroom and the organs from these bodies were brought in and displayed to the class. You weren't even allowed to see a white corpse.

During our clinical years ... the tutorial groups that we were in were separated along colour lines ... We couldn't work in the white wards in the obstetrics wards ... the white side of the hospital was a 'no-go' area for students of colour.

The separation of doctors continued throughout our internship years. There were separate residences. There were three or four white interns with us – they had a separate dining room. There was obviously the very sore point of differential salaries.

³³ The students at UND faced a similar situation to their black colleagues at 'white' medical schools, because it was attached to a predominantly 'white' university.

- 64 Even the training received by the few black students who were admitted to white medical schools was in some ways inferior to that of their white colleagues. While the lecture halls were not actually segregated, some of the practical training was. It is important to note that there was no legislation enforcing this discrimination; it simply became accepted practice at the medical schools. Black students could not attend *post mortems* on white cadavers and, at many medical schools, black students were not allowed to examine white patients. This changed in the mid-1980s when they were allowed to examine those patients who gave consent. Even after this, many hospitals maintained a policy preventing black students from examining white women in the obstetrics and gynaecology wards.
- 65 Black students had to do their clinical training in black hospitals, whereas white students could choose from any of the teaching hospitals. Since most of the training institutions are attached to white hospitals, black students had to travel long distances for their training. Heads of department usually chose to be based at the white hospitals, which limited the access of black students to the best and most experienced teachers. Since black hospitals lacked the resources of the white hospitals, many of the black students felt that they were deprived of the opportunity to use new technology or to see ‘first world’ diseases.
- 66 Conditions in the black hospitals were often horrific, which in itself hampered proper ethical treatment of patients. As one former student told the Commission, “it’s difficult to teach ethics in an unethical environment.”³⁴

Dr Solly Rataemane’s personal experiences of post-graduate training at the University of the Witwatersrand

Our lectures and clinical work (in neurology) took place in the Wits Department of Neurology ... One afternoon, Dr Rangaka and I were the only two post-graduate students who attended the clinical session. The senior specialist would not give us a patient to assess. We were told that she was protecting us against embarrassment, if the white patients were to refuse being examined by black doctors. It was clear that we were only allowed to examine these patients in the presence of our white colleagues, who would explain that we are also doctors.

I was allocated a rotation at ... one of the white centres providing training in child and adolescent psychiatry. On the eve of my commencement at this centre, a senior member of the Department of Psychiatry phoned me to inform me that I would not be going to that centre, as the superintendent of

34 Interview with Dr Umesh Laloo, conducted by Sheila Roquette, April 1997.

the centre was white and racist and he was not happy to have black doctors interview white children and white families. My anger at the Department and the University was immeasurable.

Inadequate teaching of ethics and human rights

67 None of the health science faculties made the teaching of ethics and human rights a priority. Most often, courses on these subjects were optional and the students were not tested on the material, thus reducing their incentive to attend the lectures. The teaching institutions failed to integrate ethics and human rights into the curricula in a way that could have helped students understand their importance and practical applicability. In addition, students were not encouraged to question the *status quo* or to protest at the differences in the provision of health care by race. Professor Frances Ames told the Commission:

I think submission to authority and absolving oneself from blame by saying that one has to obey orders are widespread... I think all medical students should be taught about the research on submissiveness being a key etiological factor in the perpetuation of atrocities. They should be fully familiar with Milgrim's work and reflect on Hannah Arendt's concept of the 'banality of evil'.

Relationship between the state and medical school faculties³⁵

68 One of the major points of confusion concerning the medical faculties was their relationship with the state. The hospital superintendent, who ran the hospital, was accountable *only* to the provincial authorities. Doctors in the public hospitals (which were often also teaching hospitals) were appointed by the province and were subject to provincial terms of employment. Professors were appointed jointly by the university and the state through a committee composed of medical faculty members, administrators and provincial representatives. The university paid only a small percentage of their salaries.

69 This arrangement may have made it more difficult for individual members of medical faculties to criticise state policies, as they may have believed that such criticism would have put their jobs in jeopardy. Professor Frances Ames related the following incident, which illustrates that this was not an unfounded fear:

[In] 1980 ... I was pushed and shamed into action by UCT students. They invited me to join a panel to address a public meeting held at the Medical School to protest against the refusal of the South African Medical and

³⁵ The information in this section comes from the University of Witswatersrand's submission to the Commission.

Dental Council to discipline Drs Lang and Tucker, who had been accused of improper and disgraceful conduct during the public inquest into Biko's death.

I accepted their invitation and was surprised when, some hours before the meeting, I was summoned by the superintendent of Groote Schuur Hospital. He told me that head office had 'phoned him to tell me that I was a provincial servant and forbidden to participate in political activities.

- 70 Although many of the racist practices in the hospitals breached international medical ethical codes of conduct, medical faculties were subjected to triple loyalties: to their patients, to their students and to their employers (the state and the university). Criticism of the failure of health science faculties to act against apartheid medical practices must also be tempered by the acknowledgement that universities in general relied on the government for a large part of their funding and were not completely independent. Failure to conform made institutions vulnerable to funding cuts.

Complicity of the medical schools

- 71 While some medical schools did start to speak out against the inequities of apartheid medicine, especially in the latter part of the period under review, they were generally complicit in committing human rights abuses by helping to create and perpetuate the racist environment in which health professionals were trained. Greater efforts should have been made by the lecturers and administrators to provide equal educational opportunities for all students. The medical schools could have challenged more vociferously the issue of segregated facilities, hospital rules concerning the treatment of patients, the lack of promotion of black doctors and the unequal resource allocation to black and white teaching hospitals. In addition, they could have encouraged their students to question the validity of the system and taught them how to maintain their integrity as doctors by upholding international ethical standards for the profession. Finally, they could have been more vocal in encouraging the professional organisations to take a stand against apartheid medicine and the injustices within the profession that stemmed from the maldistribution of resources.

■ THE ROLE OF THE NURSING PROFESSION

- 72 Nurses in South Africa form the largest body of health workers in the country and make a great impact on health care delivery. During the period under review, they were very often at the frontline when it came to treating patients who had been subjected to human rights abuses resulting in injuries.

- 73 Nurses working for the prison services were very often the first points of contact for prisoners or detainees with medical complaints arising from abuses. The role of nurses in preventing and reporting abuses could thus have been absolutely crucial, as they could have brought cases to the attention of the relevant authorities and the public at large. The fact that this seldom happened reflects the hierarchical relationship between nurses and doctors, the subordination of nurses, the lack of awareness of ethical rights and responsibilities and the failure of the South African Nursing Council (SANC) to support and encourage the observance of human rights. Rather, nurses were encouraged to support the political situation of the day:

If they [nurses] suspect that a person is involved in insurgent or terrorist activities, they are required to report this to the medical superintendent or the nearest police station or army unit. If they do not do so, they may themselves be charged under the Terrorism Act if there is evidence that they have given assistance to a 'terrorist'.³⁶

- 74 Submissions and statements received did not indicate that nurses actively participated in gross human rights violations, but they *did* suggest that acts of omission and 'turning a blind eye' were common. "I think we are all guilty, but we had blinkers on, so did not see it at the time."³⁷

Experience of Ms Betty Ncanywa, a nurse at Livingstone Hospital (Port Elizabeth) in the 1980s

Most of the cases that we attended were for gunshot wounds and tortured people and detainees with severe depression. Some died before they reached us. Some died on arrival. Some were taken before we could treat them. The Security Police would take them from the casualty department before we could even treat them.

As nurses, we were given an instruction that we mustn't obstruct the work of the security force. We mustn't stand in the way of the police. The only thing we need to do is to just treat the patient. Even if we see people being tortured, we must just keep quiet. This was the instruction from the hospital management ... I must try to refrain from politics, otherwise my future would be in jeopardy.

- 75 This testimony very starkly illustrates the dilemma in which nurses found themselves. On the one hand, their training inculcated a culture of adherence and obedience

³⁶ Searle, Charlotte (1986) *Ethos on Nursing and Midwifery: A General Perspective*, page 253.

³⁷ Respondent (anonymous) quoted in the DENOSA submission.

to the hierarchy (doctors, matrons, sisters, nurses) and to authority of any kind (for example, the police). On the other hand, those who were conscious of human rights and ethical issues found themselves having to lie (for example, to admit a patient with 'severe depression' when they knew this was not the diagnosis); discouraging patients from going to hospital when they knew hospital care was desirable, and performing procedures (for example, removing bullets) for which they knew they were not qualified.

- 76 The way in which nurses were perceived to collude with apartheid policies and, during unrest situations, to co-operate with police (even though this perception was not always accurate) undoubtedly had a negative impact on the delivery of health care by nurses to communities.

This touches individual lives and safety, the ability to function in one's professional capacity and a fundamental loss of trust between various sections of the community, leaving jagged wounds of a physical, psycho-emotional, social and spiritual nature, which may take a long time to heal.³⁸

■ THE ROLE OF MENTAL HEALTH PROFESSIONALS

- 77 The area of mental health has historically been neglected in South Africa. Very few psychologists and clinical social workers were trained, resource allocation was notoriously inadequate and very few attempts were made to provide culturally appropriate mental health care to all South Africans.
- 78 The training of clinical psychologists in South Africa has been criticised for producing mental health professionals who mirrored their (white) environment: urban-based, in private practice and focused on curative rather than preventive mental health care. In addition, the type of treatment modality taught was overwhelmingly that of one-on-one therapy. Although obviously effective in some settings, this kind of therapy was generally available only to the elite few who could access and afford it – that is, the white population.
- 79 The first black psychologist to qualify in South Africa did so in the early 1960s. By 1998, the Human Sciences Research Council estimated that there were 3 897 psychologists in South Africa, 3 587 (92 per cent) of whom were white. Mental health care for black people consisted largely of institutionalisation (even at the time of reporting). A number of inaccurate concepts about the mental health of black people

³⁸ Sheila Clow, quoted in the DENOSA submission.

included, for example, the notion that black people do not get depressed and that black people displaying symptoms of severe stress are suffering from 'Bantu hysteria', to be treated with medication. An entire language and terminology was built up around this issue. The effect was to deny the need for preventive and counselling services for black people. Instead, chronic stress and trauma were pathologised and prescription medication was used as treatment.

Involvement in human rights abuses

- 80 While it was extremely difficult to find any hard evidence of overt involvement in gross human rights violations by psychologists, the profession was undoubtedly involved in human rights abuses through acts of omission. It also displayed a general apathy in relation to issues such as the effects on mental health of endemic violence, detention, solitary confinement and torture. In addition, until very recently, the profession failed to draw attention to the incontrovertible link between apartheid and mental health or to comment on the destructive effect of apartheid policies on the mental health of those they oppressed. According to one submission:

All citizens have had their human dignity denied and degraded through the experiences of living through the apartheid years. Our humanity and common sensibilities have been stunted.

It is evident that the predecessor of the South African Federation for Mental Health at the national level was supportive of the apartheid policies of the government and did little or nothing to oppose other human rights violations in the field of mental health. It even reprimanded committee members or staff who did so.

- 81 Various submissions reported that individual psychologists were involved in human rights abuses and/or unethical conduct that may have led to abuses. Some of those named were psychologists EG Malherbe, RW Wilcocks and HF Verwoerd who, for example, advocated racist policies like job reservation and prohibition of sexual intercourse between the races. Others mentioned were psychologists like ML Fick and JA van Rensburg, who were amongst those who propagated ideas of black intellectual inferiority. These views bolstered segregationist policies that resulted in gross violations of human rights.

- 82 Similarly, there is evidence that at least some practitioners engaged by the prison service acted in collusion with the prison authorities:

Practitioners ... tended to adopt an attitude that indicated their subservience to the requirements of the security police or the prison administration. Indeed, many of them ... would rather gather information from the warders/jailers than myself. I often wondered who the actual patient was ... I, the patient, became invisible...

The psychologist who visited me at Victor Verster Prison ... in Nov 1982, really interrogated us ... His role was to ferret out exactly what we would do on our release. He actually told me that, if I became a psychologist, I would be dangerous to the state because of the insights I could bring to political organisations – that I would be able to decide who would be an asset and who a liability to the struggle, while sifting out agents!³⁹

- 83 Breyten Breytenbach described his encounters with prison psychologists thus:

These perverted practitioners of the spurious science of psychology do not have as their first priority to help the prisoner who may be in need of it. They are the lackeys of the system. Their task is very clearly to be the psychological component of the general strategy of unbalancing and disorientating the political prisoner.

- 84 A former SAP psychologist admitted in an interview that work associated with the use of psychology in torture and interrogation was 'contracted out' to outside psychologists, so that the SAP could deny the involvement of their own staff in this type of unethical behaviour.

- 85 Conditions in mental institutions were appalling and did nothing to foster mental health. Inmates were used as sources of income-producing labour and there are (unproved) allegations that black patients were used as 'guinea pigs' in research. Mental health professionals remained silent about this situation. The Department of Health acknowledges:

Conditions in a number of psychiatric institutions are still poor. Some of the worst wards and hospitals (for example, Westford in Gauteng) have been closed down. Many psychiatric hospitals are still faced with staff shortages.

³⁹ Cooper, Saths, Mental Health Workshop transcription, Johannesburg, 20-21 November 1997.

Abuse of diagnosis and treatment

- 86 The abuse of diagnostic tools by mental health professionals in collusion with the state must be regarded as a violation of human rights. Diagnosis was used to silence activists or opponents of the state, condemning them to institutions where they were under state control. This tendency increased the stigma attached to mental health institutions.
- 87 Health professionals also produced diagnoses that minimised illness or claimed that individuals were feigning illness, thus allowing the police to continue torturing and ill-treating political prisoners. Misdiagnosis also served to deny political prisoners and black people in general access to much needed mental health services. Yet, ironically, in an attempt to persuade the Commission's Amnesty Committee to grant amnesty, a diagnosis of post-traumatic stress disorder was employed by security personnel.
- 88 The abuse of diagnosis is inextricably linked to that of treatment. Thus, individuals were given the wrong medication. As noted above, it was also claimed that detainees were used as guinea pigs to test new drugs.

Education, training and research

- 89 As with other health professionals, mental health professionals received very little under- or postgraduate training in ethics or human rights issues. At the time of reporting, psychologists were still not required to take an oath on graduation or registration and appeared to be acquiring knowledge about appropriate conduct by default rather than design.
- 90 Up until the time of the Commission, the training of mental health professionals adopted a largely Eurocentric paradigm, resulting in a style of mental health care that was inaccessible and inappropriate for many South Africans. While transformation was occurring in some academic sectors, change was still absent in others. Likewise, the types of psychometric tests used for assessment purposes (such as IQ tests) still tended to be appropriate only in a western culture. In South Africa, they were used as a way of excluding black candidates from, for example, educational institutions and employment opportunities.
- 91 In the same way, the types of research initiated and funded by tertiary academic institutions and organisations, such as the Human Sciences Research Council,

remained esoteric and of little relevance to the mental health needs of the majority of South Africans.

Rural mental health

- 92 Most of the deponents who came from rural communities complained that they had no access to mental health services. Those who did experienced the services as alienating. They also spoke of the need for a culture that incorporated indigenous healing systems – for interventions informed both by the prevailing culture and by religious modes of healing.

The impact of trauma

- 93 At the time of the Commission, most South Africans were still experiencing the consequences of trauma. It was clear that mental health services were not yet geared to address this need. This point was discussed at a mental health workshop conducted by the Commission which dealt with the psychosocial and emotional needs of communities and individuals who had been identified by the Commission and other victim support agencies. The view was also expressed that mental health services historically received little or no resources and that the impact of poor mental health is far-reaching. In addition, the traditional paradigm used to understand trauma was Euro-American. The indigenous wisdom in South African cultures had been marginalised and its richness ignored. An aspect of trauma that also deserves attention is its impact on families and communities at a multigenerational level so that intervention strategies incorporate the family in its entirety.

Psychiatric patients remain a vulnerable group for discrimination and abuse of human rights. Both the mentally ill and the mentally handicapped are clearly stigmatised and thus discriminated against ... In particular, there is a tendency to provide a differential level of care to different socio-economic groups, which is similar to the dehumanisation of other deprivations we have lived through.⁴⁰

- 94 The 'sins' of the mental health profession in South Africa were largely those of omission, although there is some evidence of more direct involvement in unethical conduct leading to human rights abuses. Unfortunately, because of the veil of secrecy surrounding the inner workings of the SADF and SAP and the invocation of the Official Secrets Act, it was not possible to perform an adequate assessment of

⁴⁰ Submission from Society of Psychiatrists of South Africa.

the role that mental health professionals played in these institutions. Undoubtedly, like doctors and nurses with dual obligations, mental health professionals in these settings were vulnerable.

■ THE ALLIED HEALTH PROFESSIONALS

- 95 The Commission received submissions from other sectors of the profession, including physiotherapists, pharmacists, dentists and complementary practitioners. The submission by physiotherapists pointed again to the hierarchical nature of the health profession and the fact that some professionals were perceived as having a less important status. The submission of the physiotherapy profession complained that:

Certain individuals and institutions had been invited to make submissions [to the Commission]. However, the rehabilitation therapists had not been included in this group, which consisted of doctors (and psychiatrists), nurses and psychologists. This seemed to be a perpetuation of long-standing professional hierarchy/hegemony, which needs to be challenged as part of the health care sector hearings.⁴¹

- 96 All submissions emphasised the lack of training in ethics as a major area of concern. In addition, the fact that other health professionals felt compelled to make submissions is indicative of the pervasiveness of abuses - either overt or covert - in the health sector and an acknowledgement of the fact that most health workers did not speak out enough, or at all, about these abuses.

■ PROFESSIONAL HEALTH ORGANISATIONS

- 97 In his testimony, Dr Barry Kistnasamy noted:

The social consequences of apartheid were so gross, so thoroughly destructive and so widely acknowledged and abhorred by the international community that there could be no avoiding the intrusion into the professional lives of the medical men and women of this country.

- 98 It was surely the task of the statutory and professional organisations to ensure that professionals were able to provide ethical and appropriate health care, regardless of the policies of the government in power. If, as Dr Kistnasamy states, those policies made this impossible, it was for the statutory and professional bodies to speak out against those policies.

⁴¹ Combined submission by physiotherapy professional groups

The organised medical profession

99 History has shown that the two most powerful bodies with which doctors were associated - the SAMDC and the MASA - failed to speak out or take a stand for most of the period under review.

100 The SAMDC was a statutory body and, during the period under review, was responsible for the registration, education, maintenance and monitoring of professional standards of conduct as well as for disciplinary enquiries into allegations of misconduct of all health professionals except nurses and pharmacists.⁴²

101 The successor body to the SAMDC, the Interim National Medical and Dental Council (INMDC), prepared a submission to the Commission on behalf of the earlier body. The submission made it clear that the SAMDC saw itself as an independent body:

Although created by statute originally in 1928, the SAMDC was not an organ of state. It was totally funded by the health care professionals falling within its jurisdiction. The majority of its membership was persons who were not appointed by the Minister.

102 Yet, the SAMDC was viewed widely as an almost parastatal organisation, lacking in independence. Nothing highlighted this more than its initial failure to launch an investigation into the conduct of the district surgeons, Drs Tucker and Lang, after the death of Steve Biko. The following explanation was given as to why the SAMDC's first enquiry into the matter in 1980 differed so markedly from the second enquiry in 1985 (undertaken in large part in response to continued public outcry):

When eventually (the second) inquiry was held, that was a completely different body in a different Council. Remember the Council's terms of office stretch in five-year terms, or used to. So, that was one Council from 1980 to 1985 and then a new Council from 1985 onwards. So that when eventually this inquiry reached the stage where it came before Council, there was a completely new Council with new members, and that Council then came to the conclusion that the practitioners were in fact guilty.

103 One might question this explanation. A body responsible for discipline and the maintenance of professional standards of conduct should display consistency in applying those standards.

42 It was replaced by the Interim National Medical and Dental Council in 1994. The South African Nursing Council was the equivalent for nurses. (see above)

104 The SAMDC, in contrast, displayed no hesitation in taking action against another of its members who was guilty - not of negligence in treating patients, but of resisting the apartheid regime. Dr Aubrey Mokhoape was a doctor convicted of terrorism in 1974. During his interrogation, he was put into solitary confinement, beaten and tortured. The Council did nothing to protest about this treatment and proceeded to use the criminal offence ('terrorism') as the basis for launching proceedings against him as a medical professional. It eventually dropped its charges against the doctor, but the case demonstrates that the SAMDC could take swift action when it deemed it appropriate.⁴³

105 Another significant problem raised in the hearings was the fact that the SAMDC was only able to respond to complaints or submissions made to it. This inability to be proactive severely hampered its capacity to monitor and maintain professional and ethical conduct.

106 In a letter submitted to the Commission after the hearing, Mr Prinsloo, on behalf of the executive committee of the SAMDC, stated:

The Committee resolved that the [Truth and Reconciliation Commission] be informed ... that the Executive Committee wished to state explicitly that it records an apology in respect of any acts of omission or commission on the part of the SAMDC in not taking firmer steps to negate the effects of an unacceptable social system.⁴⁴

107 The apparent collusion of some doctors with state security forces and the lack of response from professional bodies in relation to this led to deep divisions within the South African medical world. Therefore, two bodies came to represent the medical profession - MASA and the National Medical and Dental Association (NAMDA).

108 The older body, MASA, was a voluntary, independent, professional association for medical doctors. It was historically (at the time of reporting) the largest professional medical organisation in South Africa, with a membership of about 14 000. At the time of the hearings, it saw its role as "empower[ing] doctors to bring health to the nation"⁴⁵ by representing the collective interests of the profession and the patients it serves, as well as shaping health policy to meet the needs of the community.

109 MASA made a 104-page submission, the result of an extensive study of its records and archives. The submission noted that MASA had members that

43 Submission by the Health and Human Rights Project.

44 Personal correspondence from Mr N Prinsloo to Dr W Orr, 24 July 1997.

45 The MASA Constitution.

actively supported the apartheid government and members that actively opposed it. Rather than focusing on the activities of individuals, the document examined MASA's role as an association. It said, in this regard:

The Association in general was quite comfortable with the status quo, and its public reaction to any criticism of the inequity and the iniquities in society, particularly the inequities in health care delivery, was to dismiss that criticism as the work of enemies of the state and it defined all sorts of means to defend itself and the system.

- 110 The submission also acknowledged the fact that MASA failed to respond appropriately to the health needs of the majority of South Africans.

MASA was always, without doubt, a part of the white establishment ... and for the most part and in most contexts, shared the worldview and political beliefs of that establishment. Inescapably, it also shared the misdeeds and the sins for which the white establishment was responsible.

- 111 Dr Hendrik Hanekom of MASA clearly acknowledged the organisation's past positioning in his response to a question at the hearing:

MASA was so wrapped up in its white, male, elitist, educated, professional world as individuals and as a collective organisation and as part of a broader society from which doctors were drawn, that it failed to see the need to treat all people as equal human beings. Perhaps the same could be said of other groupings in society. MASA allowed black and white people to be treated differently, and this is the form of human rights violations for which it stands disgraced.

- 112 The written submission added, however, that the events surrounding the death of Steve Biko forced MASA to begin a long process of examining the ethics and morality of its actions.

This sad and disgraceful episode marked the beginning of a movement within the association, a movement of opposition to the actions and attitudes of the then leadership of the Association which, haltingly and with many setbacks and failures, finally grew powerful enough so that by 1989, it was quite clear that the Association had set its feet firmly on the road of renewal and transformation.

- 113 NAMDA was an ‘alternative’ medical association, formed on 5 December 1982. In its submission to the Commission, the Progressive Doctors’ Group (PDG), a core group of ex-NAMDA doctors formed to pursue discussions about a united medical association for South Africa, gave some of the reasons for the NAMDA breakaway from the MASA. These included:
- a the conduct of the profession in respect of the medical conduct of those responsible for the death of Steve Biko;
 - b the devastating effects of apartheid on health and human rights, and
 - c the failure of existing medical organisations to respond cogently to these issues.
- 114 With the increased repression of the 1980s, it became important to work at making health facilities safe or providing alternative services. NAMDA, together with other professional organisations, such as the Organisation for Appropriate Social Services in South Africa (OASSSA), took on this responsibility.
- 115 NAMDA disbanded in the early 1990s when it became evident that South Africa was moving towards a new democratic dispensation in which the Department of Health would (it was believed) take on the issues that had triggered its creation.
- 116 The PDG highlighted a number of other concerns in its submission: The first was the harassment of NAMDA and its members, which manifested itself in various ways. Second, was the concern that so few health professionals came forward at the time to testify about human rights abuses in the profession. “It seems that many more health professionals were aware of problems or were involved in problematic practices than they were prepared to acknowledge.” A third concern was the way in which certain research was conducted, particularly in the area of occupational health: for example, heat acclimatisation chambers set up to ‘customise’ workers to the work place. Last was the fact that, at the time when NAMDA was supporting the ‘Free the Children’ campaign, MASA was involved in drawing up, ‘Children in places of detention: a code for their handling’. In other words, while NAMDA abhorred the very concept of detaining children, MASA was trying to find ways to make it more acceptable.

South African Nursing Council (SANC)

117 Similarly, it is evident that nurses did not feel that their statutory body, the SANC, or their professional organisation (then the South African Nursing Association) offered appropriate or adequate guidance and support for nurses who found themselves in situations where human rights were abused.

118 The SANC admitted in its submission:

We further acknowledge and accept without justification that Council was influenced by the policies of the government of the day. This could have resulted in both a conscious and unconscious perpetuation of those discriminatory policies and legislation, leading to gross violations of human rights.

We are aware that Council was all the time morally bound to adhere to a strict professional approach to matters of nursing, without allowing itself to be used as a tool of the apartheid machinery.

We appreciate that Council could at times have exercised a free discretion on some of the issues.

We therefore wish to apologise unreservedly both for conscious and unconscious activities that could have had the effect of undermining human rights from time to time.

119 According to the DENOSA submission, there was, over the years, no accountability within the profession to pledges or other codes studied by nurses. This is underscored, for example, by the long-standing acceptance of section 49 of the Nursing Act (no 69 of 1957), which made it an offence for white nurses to be subordinate to black nurses.

120 Other 'failures', raised by the SANC include:

- a Only white persons could serve on the Council.
- b While the SANC was aware that there was segregation in health treatment along race lines, which vitiated the nurses' pledge, it apparently made no effort to protest against this.

- c Where victims of accidents were denied emergency treatment on the scene because of their race, the SANC made no efforts to confront this situation.
 - d The SANC failed to react to gross inequities in the provision of training facilities for the various population groups.
 - e When former political prisoners and detainees made allegations against nurses in prisons and other hospitals, the SANC failed to conduct proper investigations.
 - f Appointments of staff in the categories of typist/clerk and upwards were almost exclusively limited to whites. There was no effort on the part of SANC to empower members of the disadvantaged communities.
- 121 These admissions on the part of the SANC make it unsurprising that nurses failed to respond more vigorously to the human rights abuses with which they were confronted. Where leadership failed to lead on issues of human rights and, at times, was seen to sanction and support apartheid policies and practices, those in subordinate positions would have needed unusual courage to protest, particularly when threatened, as was Ms Betty Ncanywa, with loss of employment.

Mental health organisations in South Africa

- 122 The South African Psychological Association (SAPA) was founded in 1948, with a membership of thirty-four. In 1962, following the admission of a black member, a new association, the Psychological Institute of the Republic of South Africa (PIRSA), was established exclusively for whites. The two organisations merged in 1983 to form the Psychological Association of South Africa (PASA). Black professionals were permitted as members but, because of the racist history of PIRSA, many chose to join the Black Psychologists' Association instead.
- 123 OASSSA was formed in 1985. It included psychologists and social service workers, and attempted to provide social services (largely counselling) to communities and individuals that did not generally have access to them.
- 124 Finally, in 1994, the Psychological Society of South Africa (PsySSA) was formed. This organisation represented the professional interests of South African psychologists and was attempting, at the time of reporting, to bring about transformation in the field of mental health care.

- 125 The Society of Psychiatrists of South Africa (SPSA) is a sub-group of the MASA and was formed in 1966. About half of the approximately 300 registered psychiatrists in South Africa are members. Commenting on its activities over the previous thirty years, the SPSA said:

That the SPSA had to be prodded into adopting a more distinct role, that of lobbying the government for equal and adequate facilities for all the country's mentally ill, regardless of race, is evident ... Much of the Society's concern with respect to apartheid was generated in response to external pressures and reports since 1977.

- 126 In other words, the SPSA was a largely reactive body that did not play a proactive role in ensuring that the human rights of mentally ill people were upheld.

- 127 In addition to the professional organisations mentioned, a number of societies working in the area of mental health were formed over the years. In 1920, the South African National Council for Mental Hygiene and the Care of the Feeble-minded was formed in an attempt to facilitate communication and formalise the relationship between the government and these societies. This Council was originally structured in such a way that at least half of the members of the policy making board were government psychiatrists. In addition, the Broederbond managed to influence policy significantly.

The Board of the SA National Council for Mental Health was, therefore, at least until the early 1980s, heavily influenced by two power groups not representative of civil society, namely government psychiatrists who sought to protect government mental health services from criticism and reform, and the Afrikaner Broederbond, which oversaw the implementation and maintenance of a Christian National Philosophy, which is today recognised as being a euphemism for apartheid.

In 1966, the Department of Social Welfare and Pensions issued its notorious Consolidated Circular no 29 [Appendix 4], according to which welfare organisations were no longer allowed to have racially mixed memberships ... The National Council for Mental Health complied with the circular by excluding all black persons from its meetings and membership.

- 128 This was in direct contravention of the constitution of the World Federation for Mental Health (of which the National Council for Mental Health was a member),

which affirmed non-discrimination on racial grounds as a major principle. The World Federation failed to act against its South African affiliate, however.

129 During the 1980s, the Council began a gradual process of transformation, starting with racial integration. Eventually, after wide consultation, the South African Federation for Mental Health (SAFMH) was formed in 1992.

130 Some would argue that, because the profession was so small, any intervention or declarations would have had little effect. In addition, the fact that psychology was low in the hierarchy of health care has been put forward as a reason for the profession's failure to act on issues which should have drawn rigorous condemnation. These arguments, however, appear more as attempts at self-justification than as valid reasons for the profession's failure to respond to human rights abuses. For instance, in July 1987, the SPSA issued the following statement:

The implementation of section 29 of the Internal Security Act 74 of 1982 and other Emergency Regulations involves a type of detention such as isolation, solitary confinement, immoderate interrogation, etc., that in our opinion may damage the mental health of many persons so detained.

We accept that it is our bounden duty to effectively treat and prevent relapse in the mentally disordered. We wish to express unequivocally our opposition to practices that lead to mental breakdown.

While we accept that justice must be done and that security must be maintained, we believe that this should not be achieved in a manner that diminishes the dignity of the individual or the integrity of his or her mind and body.

131 This mild (and somewhat euphemistic) statement could surely have been issued much earlier than mid-1987. Incontrovertible evidence of the mentally deleterious effects of detention, solitary confinement and torture existed decades before this. The SAFMH submission reflected on this:

The Board members and staff of the SAFMH acknowledge that the Board of the National Council for Mental Health was guilty of activities contrary to the promotion of good mental health, by actively and tacitly supporting the apartheid policies of the previous government and failing to support those within its ranks who protested against apartheid atrocities and human rights violations in the field of mental health. They are also conscious of many acts

of omission during the apartheid era and that, instead of campaigning actively against the mental illness of apartheid, they remained silent ... They express their sincere regret for the Federation's action in this respect ... They will in future strive towards the social welfare of all South Africa's people, with special recognition of those who have been previously disadvantaged.

■ RESISTANCE TO ABUSES

- 132 The Commission acknowledged that it was difficult for health professionals, particularly those with dual loyalties, to fight against the systemic human rights abuses that apartheid so deeply entrenched in the health sector. There were, however, many instances where people protested quietly or vociferously, and a few who put their careers and lives at risk in protest against violations of human rights. Many of the people who protested about the conditions under which health services were delivered or did not co-operate with state authorities were victimised in various ways. Some were fired from their jobs; others ruined their chances of promotion; some faced personal violence.⁴⁶
- 133 Many unknown and nameless health workers offered health care to injured 'protesters' in their own homes in the townships. Injury during an unrest situation meant automatic arrest and people who went to hospital, particularly with gunshot injuries, were often handed over to the police. These health workers placed themselves and their families at risk and, although the Commission was unable to name them, they deserve acknowledgement. They saved many lives and prevented many inappropriate arrests.
- 134 Although one can cite many such cases, the health profession as a whole was not outspoken enough in its protests against abuses.

Raids for medical files

- 135 During the period of unrest in the mid-1980s, Dr Tim Wilson,⁴⁷ who was the Chief Medical Officer at Alexandra Health Centre in Alexandra township outside Johannesburg, tried to prevent police from identifying so-called 'terrorists' (anti-apartheid protesters) through the seizure of patients' medical files. On many occasions, he refused to turn over the records. He also advised his staff that, while they could not obstruct police activities, they were under no obligation to

46 For example Professor Jerry Coovadia's house was bombed as a result, it seems, of his activities in NAMDA. (Interview with Professor Coovadia by Sheila Roquitte, 14 April 1997).

47 The information is from an interview with Dr Tim Wilson by Sheila Roquitte, 14 April 1997.

help them. He told patients that, if they gave false names or addresses, nobody in the clinic would attempt to verify them, thus making it safer for people to obtain medical treatment with less fear of subsequent detention.⁴⁸

Baragwanath doctors

- 136 A letter signed by 101 doctors from Baragwanath Hospital (historically an African hospital) was published in the South African Medical Journal (SAMJ) of 5 September 1987, protesting the appalling conditions in the hospital:

*(T)he facilities are completely inadequate. Many patients have no beds and sleep on the floor at night and sit on chairs during the day. The overcrowding is horrendous. Nurses are allocated according to the number of beds, and not to the number of patients.*⁴⁹

- 137 The Transvaal Provincial Authority (TPA) claimed that the doctors' statement was inaccurate and demanded an apology from them. Most doctors signed the letter of apology, later published in the *SAMJ*, because they believed that they could face personal victimisation if they did not do so. Six doctors, however, refused to sign the apology because they did not believe that they had made inaccurate statements. They were subsequently denied their previously approved posts at the hospital. One of the six doctors, Dr Beverly Traub, brought the matter to the Supreme Court and was later reinstated.

⁴⁸ It was a well-known practice of the police to identify 'criminals' by their gunshot wounds and subsequently to arrest them. (University of Witwatersrand submission, Annexure 4).

⁴⁹ Abkiewicz, SR *et al*, *SAMJ*, Vol. 72, 5 September 1987.

■ CONCLUSION (IN THE WORDS OF OTHERS)

A Worker's Speech to a Doctor

We know what makes us ill.
When we are ill we are told
That it's you who will heal us.
For ten years, we are told
You learned healing in fine schools
Built at the people's expense
And to get your knowledge
Spent a fortune.
So you must be able to heal.
Are you able to heal?
When we come to you
Our rags are torn off us
And you listen all over our naked body.
As to the cause of our illness
One glance at our rags would
Tell you more. It is the same cause that wears out
Our bodies and our clothes.
The pain in your shoulder comes
You say, from the damp; and this is also the reason
For the stain on the wall of our flat.
So tell us:
Where does the damp come from?
Too much work and too little food
Make us feeble and thin.
Your prescription says:
Put on more weight.
You might as well tell a bullrush
Not to get wet.
How much time can you give us?
We see: one carpet in your flat costs
The fees you earn from
Five thousand consultations.
You'll no doubt say
You are innocent. The damp patch
On the wall of our flats
Tells the same story.⁵⁰

50 Bertold Brecht, *Poems 1913-1956*, Eyre Methuen 1976

Apartheid was a process of dehumanisation. It reduced the majority of our people to objects or physical entities. Imperceptibly, medicine also became dehumanised. The focus was on the disease and not the person, their family and community. South Africa is politically free; however, our people need to be healed spiritually, mentally and physically if we are to create the type of society and country that we all desire. Doctors, medical schools and their teaching staff, and medical students can become important instruments for this change. The most important step in this process is to re-humanise medicine... In short, change is not merely desirable, it is essential. The narrow outlook of the past can no longer be justified.

PROFESSOR B. MAHARAJ

■ FINDINGS ARISING OUT OF HEALTH SECTOR HEARINGS

138 Health professionals who were named in submissions as having contravened ethics or acted unprofessionally will be referred to the appropriate disciplinary body, together with as much information as is available, for further investigation and suitable action. The Commission has neither the resources nor the time to conclude investigations to the point where individual findings can be made.

The Commission finds that

139 The South African Medical and Dental Council (SAMDC) failed to exercise its statutory obligations by neglecting to investigate the conduct of Drs Tucker and Lang pertaining to the death of Stephen Bantu Biko until ordered to do so by the Supreme Court.

140 The Medical Association of South Africa (MASA), its standing committees and its special interest groups failed to fulfil their stated aim of protecting the health of patients, by neglecting to draw attention, amongst others things, to:

- a the effects of the socio-economic consequences of apartheid on the health of black South Africans;
- b the fact that segregated health care facilities were detrimental to the provision of health care in quantitative and qualitative terms;

- c the negative impact on the health of millions of South Africans of unequal budgetary allocations for the health care of different 'racial' groups;
 - d the fact that solitary confinement is a form of torture;
 - e the severe impact of detention on the health of children.
- 141 Academic institutions, even those that did admit black medical students, failed to provide equal educational opportunities to black and white students.⁵¹
- 142 Education in respect of human rights for all health professionals failed to address crucial patient-care issues.
- 143 The former government, and more specifically the Department of Health, failed to provide adequate health care facilities to black South Africans. Health care resources were thus unequally distributed and inappropriately allocated and used. Certain aspects of health care provision have been particularly under-resourced – for example, mental health care and primary health care.
- 144 District surgeons, with few exceptions, failed to record complaints and evidence of torture and abuse and, where such recording did take place, failed to take any steps to report or halt such abuse. Some district surgeons, in turn, either withheld pertinent medical information or reported such information incorrectly.
- 145 The South African Nursing Council (SANC) and the SAMDC, as the statutory bodies governing health professionals in South Africa during the period under review, failed to:
- a speak out against segregation of health care along colour lines, thus compromising ethical pledges taken by doctors and nurses and failing to advocate adequate care for patients;
 - b confront local authorities who refused to allow emergency services designated for white patients to offer emergency care to black patients at the scenes of accidents;
 - c react to gross inequalities in the provision of training facilities for various population groups;

⁵¹ In a letter to the Commission, the University of Cape Town (UCT) acknowledged culpability in this regard. In addition, Dr Mamphela Ramphele, Vice-Chancellor of UCT issued a public apology at a graduation ceremony in June 1996.

- d draw attention to the lack of facilities and resources in institutions providing health care to black patients;
 - e conduct proper investigations into allegations of misconduct by doctors and nurses against political prisoners and detainees.
- 146 The SANC established surrogate nursing councils in the 'homelands' without due consultation with the nurses working in those areas. This undermined the professional status and the international recognition of those nurses.
- 147 The South African Medical Services (SAMS) of the South African Defence Force (SADF) failed to provide adequate mental health support for SADF members, particularly conscripts exposed to violence.
- 148 Members of SAMS, under the leadership of the Surgeon-General, were directly involved in the development of chemical and biological weapons to be used against individuals and in unrest and combat situations.
- 149 The Department of Health, the SADF and the South African Police and Prisons failed to provide adequate training, support and ethical guidance to those health professionals in their employ, who were working in environments in which there was a conflict of interests between employer and the patient. The interests of the patient/client were thus frequently subjugated to those of the state.

■ APPENDIX 1: THE HIPPOCRATIC OATH⁵¹

I swear by Apollo the Physician and Asclepius and Hygieia and Panacea and all the gods and goddesses, making them my witnesses, that I will fulfil according to my ability and judgement this oath and this covenant:

To hold him who has taught me this art as equal to my parents and to live my life in partnership with him, and if he is in need of money to give him a share of mine, and to regard his offspring as equal to my brothers in male lineage and to teach them this art - if they desire to learn it - without fee and covenant; to give a share of precepts and oral instruction and all the other learning to my sons and to the sons of him who has instructed me and to pupils who have signed the covenant and have taken an oath according to the medical law, but to no one else.

I will apply dietetic measures for the benefit of the sick according to my ability and judgement; I will keep them from harm and injustice.

I will neither give a deadly drug to anybody if asked for it, nor will I make a suggestion to this effect. Similarly I will not give to a woman an abortive remedy. In purity and holiness I will guard my life and my art.

I will not use the knife, not even on sufferers from stone, but will withdraw in favour of such men as are engaged in this work.

Whatever houses I may visit, I will come for the benefit of the sick remaining free of all intentional injustice, of all mischief and in particular of sexual relations with both female and male persons, be they free or slaves.

What I may see or hear in the course of the treatment or even outside of the treatment in regard to the life of men, which on no account one must spread abroad, I will keep to myself holding such things shameful to be spoken about.

If I fulfil this oath and do not violate it, may it be granted to me to enjoy life and art, being honoured with fame among all men for all time to come; if I transgress it and swear falsely, may the opposite of all this be my lot.

⁵¹ The Hippocratic Oath was taken from [Ethical Codes and Declarations Relevant to the Health Professions](#) by Amnesty International 1994, pp 42-43.

■ APPENDIX 2: THE DECLARATION OF GENEVA⁵²

At the time of being admitted as a member of the medical profession:

I solemnly pledge myself *to consecrate my life to the service of humanity;*

I will give *to my teachers the respect and gratitude which is their due;*

I will practice *my profession with conscience and dignity;*

The health of my patient *will be my first consideration;*

I will respect *the secrets which are confided in me, even after the patient has died;*

I will maintain *by all the means in my power, the honour and the noble traditions of the medical profession;*

My colleagues *will be my brothers;*

I will not permit *considerations of religion, nationality, race, party politics, or social standing to intervene between my duty and my patient;*

I will maintain *the utmost respect for human life from its beginning even under threat and I will not use my medical knowledge contrary to the laws of humanity;*

I make these promises *solemnly, freely and upon my honour.*

⁵² This is the Declaration of Geneva as found in Ethical Codes and Declarations Relevant to the Health Professions, by Amnesty International, 1994, page 4.

■ APPENDIX 3: THE DECLARATION OF TOKYO

Preamble

It is the privilege of the medical doctor to practice medicine in the service of humanity, to preserve and restore bodily and mental health without distinction as to persons, to comfort and to ease the suffering of his or her patients. The utmost respect for human life is to be maintained even under threat, and no use made of any medical knowledge contrary to the laws of humanity.

For the purpose of this Declaration, torture is defined as the deliberate, systematic or wanton infliction of physical or mental suffering by one or more persons acting alone or on the orders of any authority, to force another person to yield information, to make a confession, or for any other reason.

- 1 The doctor shall not countenance, condone or participate in the practice of torture or other forms of cruel, inhuman or degrading procedures, whatever the offence of which the victim of such procedures is suspected, accused or guilty, and whatever the victim's beliefs or motives, and in all situations, including armed conflict and civil strife.
- 2 The doctor shall not provide any premises, instruments, substances or knowledge to facilitate the practice of torture or other forms of cruel, inhuman or degrading treatment or to diminish the ability of the victim to resist such treatment.
- 3 The doctor shall not be present during any procedure during which torture or other forms of cruel, inhuman or degrading treatment is used or threatened.
- 4 A doctor must have complete clinical independence in deciding upon the care of a person for whom he or she is medically responsible. The doctor's fundamental role is to alleviate the distress of his or her fellow men, and no motive, whether personal, collective or political shall prevail against this higher purpose.
- 5 Where a prisoner refuses nourishment and is considered by the doctor as capable of forming an unimpaired and rational judgement concerning the consequences of such a voluntary refusal of nourishment, he or she shall not be fed artificially. The decision as to the capacity of the prisoner to form such a judgement should be confirmed by at least one other independent doctor. The consequences of the refusal of nourishment shall be explained by the doctor to the prisoner.

- 6 The World Medical Association will support, and should encourage the international community, the national medical associations and fellow doctors, to support the doctor and his or her family in the face of threats or reprisals resulting from a refusal to condone the use of torture or other forms of cruel, inhuman or degrading treatment.

■ **APPENDIX 4: DEPARTMENT OF SOCIAL WELFARE AND PENSIONS CIRCULAR**

**DEPARTMENT OF SOCIAL WELFARE AND PENSIONS, 21 JUNE 1966
CONSOLIDATED CIRCULAR NO 29**

- a) To all national and provincial welfare organisations
- b) To all offices of the department (for information)

CO-ORDINATION OF WHITE AND NON-WHITE WELFARE WORK IN NATIONAL AND LOCAL WELFARE ORGANISATIONS

- 1) The Government's policy on welfare organisations is based on the principle that each population group should serve its own community in the sphere of welfare.
- 2) The practice of certain welfare organisations of maintaining multi-racial organisations and having representatives of different races at council and committee meetings, is not only contrary to this policy, but also presents other problems:
 - a) Meetings of White bodies are held in White areas, usually at well-known venues where non-Whites do not normally go, and there is every likelihood that this will give rise to talk, criticism, friction and so on. The social side, as regards meeting at tea-breaks and meals, also presents problems.
 - b) Experience has shown that one or two non-Whites at a meeting of Whites are far less effective than when the position is reversed, because the non-Whites, being the minority group, are over-shadowed and therefore do not make a contribution unconstrainedly.
 - c) In the case of some non-Whites, we have to a certain extent to deal with their need for recognition of status and encouragement towards independence, a need which is not gratified when non-White delegates, as outsiders, have to act in a larger White group.

- 3) For the implementation of Government policy non-White welfare societies should be established for the various racial groups and be given the opportunity to develop side by side with the corresponding White societies, and should be encouraged under the guidance and with the advice of White societies to unite, by affiliation, into fully independent national welfare organisation for each racial group separately. In this way non-White societies could enjoy the benefit of White guidance and advice, without coming into conflict with Government policy which is opposed to multi-racial organisations founded on joint membership of White and non-White. When matters affecting non-White societies come under consideration, one or two members of the White executive committee of the main body could, if so requested, attend meetings of the executive committee of the non-White body, to effect liaison between the two committees and to acquaint the White committee with the views of the non-White committee.
- 4) If the procedure described in the previous paragraph should prove impracticable in an exceptional case, one or more members of the non-White body could be designated to attend meetings of the White executive committee in an advisory capacity to represent the interests of non-Whites when the affairs of the non-White body are being discussed. However, this alternative is considered less effective and should not be encouraged, since each of the various non-White racial groups has its own method of, and approach to, discussion, and in an atmosphere peculiar to such a group the guidance of Whites carries more weight than when it is passed on at second hand by a non-White to the non-White committee.
- 5) The policy of the Government as regards welfare organisations may therefore be summed up briefly as follows:
 - a) It is intended that non-White welfare organisations for the various racial groups should exist and develop alongside of White organisations. In the course of time, they will advance to a level of complete independence when they will be quite capable of managing their own affairs. Eventually, no White guidance and advice will be required, but what will be necessary is liaison in and consultation on matters of common interest. *Ad hoc* consultation will be possible and it would not be necessary to establish a committee for this purpose. Channels will be provided not only for exchanging views, but also for bringing to the attention of non-White organisations any information that has come to light at meetings of the White body.

- b) As an interim measure, such non-White welfare organisations for the various racial groups may be helped and encouraged, under the auspices and guidance of White societies and national bodies with which they may be affiliated, to continue to develop separately and in due course to be linked together by means of affiliation in their own national organisations.
 - c) It goes without saying that in the process of helping and training non-Whites towards independence, White members of the national body and of the local committee will be able to attend the meetings of the non-White body or local committee as advisors and not as members, in order to give the necessary advice and guidance on policy, administration, control etc.
 - d) National councils and their executive committees, as well as local White welfare organisations and their committees, must consist of Whites only, and their annual meetings must be attended by White persons only. If it is necessary for the non-White organisations to be represented at an annual meeting as well (in cases where their own national organisation has not yet been established), they will have to be represented by Whites.
 - e) The executive committee of a national or local body may, however, invite a representative or member of a non-White organisation to attend a meeting of the executive committee when a matter specifically affecting the non-White organisation is being dealt with.
- 6) The intention is that officers of Government departments will attend meetings of a body or its executive committee (White or non-White) only if effect is given to the Government's policy as outlined above.
- 7) I should be pleased to learn -
- a) whether your Council and/or any of its affiliated societies or branches has non-White members;
 - b) whether such non-Whites may serve on the executive committee of the society or on your Council;
 - c) what steps your Council has in mind to give effect to the policy of the Government as set out in paragraph 5 of this circular.

- 8) National or provincial welfare bodies experiencing any problems in carrying out the policy of the Government as indicated above are invited to discuss such problems with the Department.

- 9) This circular is issued with concurrence of the Departments of Education, Arts and Science, Bantu Administration and Development, Coloured Affairs, Indian Affairs, Health and Labour.

Signed:
Secretary

Institutional Hearing: The Media

■ INTRODUCTION

- 1 The South African media played a crucial role in helping reflect and mould public opinion during the years under review. However, could the media also be said to have been directly responsible for gross human rights violations? And to what extent were they responsible for the climate in which gross human rights violations occurred?
- 2 These were the questions asked when the possibility of a special hearing on the media was first raised. They needed to be considered along with the more obvious point that, because of the media's role in providing 'instant history', a review of its performance under apartheid might help the Commission in providing the "complete picture" of the political conflicts of the time required by the Act.
- 3 The announcement of the possibility of a media hearing resulted, immediately, in a major public debate in the media which began to air some key issues. In addition, submissions were prepared for presentation to the Commission.
- 4 The central point made in these submissions was the suggestion that the media, particularly those media that directly supported government policy, had provided a "cloud of cover" under which gross human rights violations were possible. More bluntly, the media during apartheid were seen to have "made what happened to Biko acceptable". This gave some direction to the proposed hearings, raising questions such as how and in what circumstances such a "cloud of cover" was created; what its implications were, especially for the journalists who worked in the different media, and what lessons could be drawn for the future.
- 5 Initial discussions quickly and unexpectedly revealed the complexity of existing divisions within the sector. Some black journalists objected to the Freedom of Expression Institute (FXI) doing preliminary research for the Commission, because some of its members had been part of previous management structures. The dispute was resolved after top-level discussions.

- 6 Public presentations of several submissions were made at the Commission's offices. These generated more interest in the hearing and stimulated further submissions. At the same time, special interviews were arranged with some of the state operatives mentioned in the submissions to discuss their role under apartheid.
- 7 It was soon clear that, owing to budgetary and time constraints, it would not be possible to cover all aspects of the media sector. It was agreed that the hearing would focus on three major themes:
 - a The broadcast media, primarily the South African Broadcasting Corporation (SABC), but including the Bophuthatswana Broadcasting Corporation (BOP TV) as a 'window' case, and looking briefly at Radio Freedom.
 - b The print media, with a special emphasis on the concerns of black journalists, and an attempt to involve the Afrikaans press.
 - c The relationship between the media and the state, including testimony from the media unions, from individual journalists under the theme 'silencing the press', and from state operatives on how they worked the system.

The hearings

- 8 The media hearings took place on the 15-17 September 1997 at the offices of the SABC, Johannesburg. The venue was chosen as a strong symbol of state control of media in the apartheid era. Significantly, the facilities were made available, free of charge, by the SABC.

■ LEGAL AND ETHICAL BACKGROUND

- 9 During the period under review, the South African media operated in a heavily legislated environment and saw the introduction, between 1950 and 1990, of more than 100 laws affecting its operations. This legislation ranged from blatant prohibition of publications to the threat of prosecution for printing or broadcasting subversive statements. Although it did not eliminate the production of information and statements of opposition, it severely restricted them.
- 10 The mainstream newspapers reacted to legal curbs with a policy of appeasement. They did not defy the laws but, they claim, tried to exploit loopholes and find ways to beat the system. Print media bosses introduced their own forms of self-discipline

and self-censorship, without reference to journalists. For instance, no democratically shaped codes of conduct were developed with working journalists. Instead, largely through the Newspaper Press Union (NPU), 'agreements' were imposed on journalists in a top-down fashion. This combination of far-reaching legislation, self-censorship and agreements negotiated between the NPU and the state produced an environment in which the state not only succeeded in manipulating and controlling information, but also broadly eroded the fundamental freedoms of the press.

- 11 Internationally, the trend was quite the opposite. The 1954 Declaration of Principles on the Conduct of Journalists of the International Federation of Journalists (IFJ) set a specific standard of professional conduct for journalists, opening with the declaration that "the right of the public to truth is the first duty of the journalist". Other principles pertinent to the South African mainstream press were the following:

The journalist shall observe professional secrecy regarding the source of information obtained in secret [in direct contrast, South African journalists were subjected to - and did little to defy - the infamous Clause 205] and;

The journalist shall be aware of the dangers of discrimination being furthered by the media, and shall do the utmost to avoid facilitating such discrimination based on, among other things, race, sex, sexual orientation, language, religion, political or other opinions, and national or social origins.

- 12 It was only later that the IFJ Declaration took concrete hold in the South African Union of Journalists (SAUJ). However, in reality, while the principles of the IFJ would have resonated with several embattled print journalists in South Africa, a huge gap existed between the intent of the declaration and the inaction of the majority of journalists in the mainstream press.
- 13 Unlike print, public broadcasting, in the guise of the SABC, was regulated by the Broadcast Act of 1976. Ironically, the Broadcast Act required the SABC to "disseminate information" to "all the national communities ... unambiguously, factually, impartially and without distortion". But it prevented the SABC from broadcasting anything that would cause, amongst other things, "unrest or panic ... threaten state security ... [or] damage the Republic's image abroad".
- 14 In practice, policy statements from the SABC, which on the surface appeared to be advocating racial harmony and peace, aimed at ensuring National Party (NP) control and white privilege.

■ THE BROADCAST MEDIA

- 15 The SABC enjoyed a monopoly within the country and was thus the main focus of the hearings on the broadcast media. However, the activities of BOP TV and Radio Freedom were also briefly considered.

The SABC

A tool of the government

- 16 Before the hearing, two senior broadcast consultants, Hendrik and Christel Bussiek, conducted a number of interviews with people who had either worked at the SABC in the past or were still working there. These interviews confirmed the finding of monitors who had, over the years, claimed that the SABC was, essentially, a tool of the government.
- 17 For example, content analysis by Professor John van Zyl over a period of sixteen years revealed a distinct bias at the SABC. According to his analysis, news bulletins maintained and cultivated a mindset amongst white viewers that apartheid was natural and inevitable. SABC programming, he found, was instrumental in cultivating a “war psychosis”, which in turn created an environment in which human rights abuses could take place.
- 18 Another witness at the hearing, the former SABC news anchor-man Johan Pretorius, elaborated on just how deeply he felt the government was involved:

The minister responsible for SABC had to report to Parliament; the State President appointed the SABC Board, which in turn appointed the Director General as Chief Executive Officer. The Board determined policy. For example, the SABC supported the view that there could be no negotiation with leaders or parties who used violence to achieve their political aims, therefore the SABC would not provide a platform for these people to air their views.

- 19 Pretorius added that the SABC had distanced itself from the so-called ‘new order’ media, which were in constant confrontation with the state. The perception given was that South Africa was the target of a revolutionary onslaught, and that the SABC had to fight this with all the means at its disposal.

- 20 Former head of SABC documentaries, Don Briscoe, claimed to have provided “a very balanced output of programmes showing the country’s military preparedness”. Briscoe appeared to be unable to see that his programmes had promoted the government’s determination to protect its privileges at all costs, thereby serving as an incitement to greater violence in South Africa. Briscoe said that this had not occurred to him at all.
- 21 Pretorius’ comment on the politicians of the day was that they had a “totally naive, simplistic, and one-dimensional view of broadcast journalism” and that this was particularly pertinent to television.

The NP politicians confused publicity with news value, and the other way around, when it suited them. They were virtually paranoid about what was termed exposure for subversive elements or exposure for political opponents to the right.

- 22 Despite protestations from people who worked for the SABC under the previous regime that the then government did not misuse the SABC, there is much evidence to refute this. In their research into the SABC’s activities and role under the NP government, the Bussieks concluded:

The SABC generally took a conveniently simplistic attitude towards what amounted to deliberate distortion and suppression of facts in its coverage of unrest, defiance and resistance. Most interviewees, when asked about their assessment today, start out by referring to the conditions of the broadcasting licence as published in the Government Gazette of June 15, 1979, which stipulated that the “Corporation shall broadcast nothing which may inflame public opinion or may directly or indirectly lead to any contravention of the law or may threaten the security of the state”.

- 23 Professor Sampie Terreblanche, an SABC Board member from 1972 to 1987, confirmed this conclusion. He said that the SABC not only acted as the propaganda arm of the NP, but of consecutive NP administrations. Every new prime minister, he said, had a new approach and a “need to legitimise himself, to justify his position of power”. The SABC was repeatedly used to play this very important role.
- 24 Tseliso Ralithabo, who is a current staff member of the SABC and a member of the Media Workers of South Africa (MWASA), said it was not possible to justify what he called the “atrocities of the SABC”. He countered the assertion of a fellow

staff member, Louis Raubenheimer, that the SABC was “independent”. One could still find, he said, archive material produced – for instance by Cliff Saunders – which had first been handled by government officials before it went on air in Afrikaans and English and was then translated into black languages.

- 25 The most telling confirmation of the SABC’s role under apartheid came from an unexpected source. State agent Craig Williamson told the hearing that a “special relationship” existed between the SABC and the intelligence community’s units for STRATCOM. The state, he said, was at a disadvantage because it did not own or control any credible print media. It counteracted this by its use of radio and television. Williamson also pointed out that the SABC was used at the time of the cross-border raids to present the attacks in a positive light.

Broederbond influence and control at the SABC

- 26 Different factions and personalities within the ruling party held sway at the SABC at different times during the period under review, but the influence that exerted the most control was the *Broederbond*. SABC staff and former Board members played down the role of the *Broederbond* at the SABC claiming, amongst other things, that they were never required to attend any *Broederbond* meetings and that they were not directly or indirectly approached by the *Broederbond*. There is, nonetheless, no evidence to suggest an amendment to the findings of the Bussieks, who noted:

With most of the Afrikaners on the Board being Broeders, as well as most of the top-level and many other mid-level managers, there was probably no need for any such direct interference.

If not Broeders themselves, most of the people in charge were Afrikaners or Afrikaans-speaking. A look at management positions over the years shows that career possibilities for English speakers were extremely limited.

Racial divisions within the SABC

- 27 A limited service was introduced for black listeners as early as the 1940s. The Broadcasting Act was changed in 1960 to make provision for ‘Bantu’ programmes and a ‘Bantu’ programmes control board. This five-member board was composed entirely of white members and chaired by the chair of the SABC board. A totally separate structure, headed by thirty-five white supervisors, was set up to provide

'Bantu' programmes. In 1984, when SABC Radio Tsonga, Tswana, Xhosa, Zulu, Lebowa, Venda, Swazi, Ndebele, Lotus and two 'black' television channels were introduced, the officials in charge of SABC programmes for black listeners and viewers comprised eighty-five senior employees: six black and the rest white and almost exclusively Afrikaans speaking. Throughout the 1960s and 1970s, the main responsibility for radio news bulletins lay with four national editors who worked in shifts.

- 28 The SABC's 1962 annual report states that, from the beginning, programmes were "designed to stimulate the Bantu to appreciate their own cultural heritage, both in his homeland and in the urban areas where he worked". The black services thus fulfilled their role as enunciated in the 1976 *Broederbond* 'Master Plan for a White Country' which stated:

The mass media and especially the radio will play important parts. The radio services for the respective black nations must play a giant role here.

- 29 SABC staff member Bheki Khatide, who joined the corporation in 1982, spelled out the practical implications of this at the hearing. There were, he said, different training classes for different races at the SABC. Black members of staff were given older machines to work with, and the methods applied in preparing black members of staff to become producers were inferior to those applied to his white counterparts. This was in line with the intention to project any programme made by black people as inferior and lacking in quality. Sometimes this strategy was also applied intra-ethnically, and was also used to arrest the progress of someone who did not seem to be toeing the line. Black staffers were allocated inferior budgets and were slotted into post-production facilities in the "unholy hours" between midnight and six am.
- 30 Most of what Khatide said was confirmed by Jakes Nene of MWASA. He singled out staff members such as Cliff Saunders who "haunted" them with "skewed" NP/*Broederbond* information. Nene said that black people were employed only as translators or interpreters, interpreting for white journalists who covered stories, even in the homelands. He confirmed that there was a ceiling at the SABC for black people. No black person, however well qualified, could reach supervisory level. Any white person in the employ of the SABC was an automatic superior.

Rule by *sjambok*

- 31 Regulations controlled every aspect of the lives of black staff. Under Section 14 of the Staff Code, a member of staff could be fired without being given a reason

or explanation, as long as the manager suspected that his or her ideological convictions were not in line with the government of the day. Nene said that any white person at the SABC had the right to fire any black person who was *hardegat* (intransigent). Workers received severe reprimands for looking at white women and had to give way in the passages.

- 32 Nene revealed that, between 1975 and 1985, if people were fortunate enough to be called to a disciplinary hearing, they could choose to be *sjambokked* (whipped) rather than fired. Those who refused to be *sjambokked* were dismissed without a proper disciplinary hearing. This startling revelation about *sjambokking* at the old SABC was confirmed after the hearing, when MWASA produced a list of those who had been punished in this way.

Radio Freedom

- 33 By the late 1970s, information and propaganda had become indispensable for both the proponents and the opponents of apartheid. The South African government had its security apparatus — and the SABC. The African National Congress (ANC) had Radio Freedom.
- 34 Broadcasting from five ‘friendly’ countries in Africa, Radio Freedom operated from March 1973 to December 1990, using information to “mobilise and arouse” the people into active participation in the struggle against apartheid, within and outside the borders of South Africa.
- 35 For the banned and exiled ANC, Radio Freedom broadcasts were public meetings via the airwaves. In one of its submissions to the Commission, the ANC described the channel as the ANC’s “major means of internal information and propaganda”.
- 36 At the media hearing, the South African Defence Force (SADF) submitted a document on its monitoring of the ANC’s media and in particular of Radio Freedom. The document said that Radio Freedom was used to “communicate a message of intense hatred and the instigation of a climate of violence”. The SADF made a direct correlation between select Radio Freedom broadcasts and acts of violence within the country, like the killings of community councillors, police members and other ‘collaborators’.
- 37 Thus, for example, the fact that 13 540 security force members were attacked between 1984 and 1990 was attributed to Radio Freedom broadcasts such as:

"If you do not throw your weapons into the sea, then use them against the racist army and police, who are upholding the inhuman system". (Radio Freedom on Radio Angola, 4 April 1990.)

- 38 Undoubtedly, the ANC's media offensive assisted in the war against apartheid and may have contributed to a climate of violence. But it is difficult to conclude that the broadcasts alone were directly responsible for the large number of incidents of gross human rights violations recorded in the SADF document, particularly as nobody was forced to tune in and listen to Radio Freedom.

■ THE PRINT MEDIA

The English-language press

- 39 The commercial newspaper industry had its origins in colonialism and was modelled on its British equivalent. From the early twentieth century, mining capital played an increasingly dominating role in the newspaper industry. Although there were a number of independent papers, these were gradually swallowed up by the two main publishing houses: the Argus Printing and Publishing Company (now Independent Newspapers) and South African Associated Newspapers (SAAN) – now Times Media (TML). In 1920, these two publishing houses agreed to split the market between them, leaving the morning papers to SAAN and the evening papers to the Argus Group. Even so, the relationship was fairly incestuous: for example, the Argus Group was the single biggest shareholder in SAAN. Anglo-American had effective control over both newspaper groups.
- 40 During the period under review, the publishing houses reflected the broader apartheid structures. Ownership was exclusively white. The term 'opposition press', used to describe the English-language press, was a misnomer. Within this then bi-polar world, there was only one viewpoint propounded in the mainstream press and that was a capitalist perspective. Independent, black, liberal, socialist and Communist publications were either banned or folded under commercial pressure, while the so-called mainstream press prospered and grew.
- 41 In later years, 'township editions' became an integral part of the English press. There are differing opinions as to the credibility of these publications, which carried news felt by white management to be appropriate for 'people of colour'. On a par with these township versions were the papers owned by the publishing houses aimed at the black market. Until such time as black editors edited the latter, and

interference by white management diminished, the content of these papers was also determined by white perceptions of what they believed black people wanted to read.

- 42 This focus on very specific black-white issues tended to dominate the hearings. Surprisingly, most of the testimony – and most of the discussion about the print media – centred on the role of the so-called ‘liberal’ or ‘opposition’ English-language papers, their stance vis-à-vis apartheid, and conditions for black journalists working on those papers. Other issues tended to take second place to the expressions of anger and frustration felt by black journalists. Although these feelings were previously known, the extent of the anger felt and the pain endured had not, before this hearing, been clearly expressed. Nor had they been properly understood by whites in the media, who showed considerable insensitivity in their inability to empathise with their black colleagues.
- 43 Despite the criticisms of the English mainstream press under apartheid, many came to its defence. Former SAUJ president Pat Sidley said that, although a great disservice was done by a number of individuals and a couple of institutions, there were many – fellow journalists and a few editors – who did a great deal to open up thought-processes in the public mind. There are a number of examples of this. One well-known incident was when Tony Heard, then editor of the Cape Times, published an interview with Oliver Tambo on 4 November 1985. Quoting banned persons was illegal in terms of the Internal Security Act (of 1982 as amended). Heard reported that SAAN eventually offered him a severance agreement and, when he refused it, he was fired on August 1987.¹
- 44 Jon Qwelane, the most severe critic of the mainstream media, acknowledged that it was the English-language newspapers whose journalists demonstrated “periodic flashes of courage and brilliance” by exposing the gross injustices perpetrated by the system of apartheid. He cited examples such as reporting on the inhumane conditions in South Africa’s prisons, the Information (‘Info’) scandal, the unmasking of the Civil Co-operation Bureau (CCB) and the exposure of Vlakplaas.
- 45 Cyril Ramaphosa, chairperson of TML and previously a unionist and anti-apartheid leader, agreed that English newspapers in the main played a courageous role, imparting information when the government was trying to restrict it. He also paid tribute to specific journalists who focussed on the struggles of ordinary people.

¹ Tony Heard, *The Cape of Storms*, Ravan Press: Johannesburg, 1991.

- 46 SAUJ president Sam Sole said his organisation believed that there had been serious shortcomings in the mainstream English press regarding their coverage of apartheid and the forces opposing it. Many of these shortcomings were the result of institutional weaknesses rather than personal culpability. He said that media institutions were, both then and now, weakened by fragmentation, especially along racial lines.
- 47 In its submission, TML argued that it had challenged the versions of “lying officials” on events such as the Soweto uprisings, the death of Steve Biko, Boipatong, the ‘Gugulethu Seven’ and the ‘Uitenhage massacre’. It claimed that its papers had refused to cower before NP bullying and had pioneered investigative reporting in South Africa. The papers had also provided a platform from which courageous and ingenious journalists could chip away at the edifice of apartheid.
- 48 Journalist and editor Moegsien Williams said the English press was an opposition press in the sense of white sectarian politics only:

They did not support the ANC, never articulated ANC policies, never wrote about the aspirations of the vast majority of South Africans, about their views, what they wanted, their need for a vote. Nothing happened outside white parameters. They were under a delusion - their real opposition sat on Robben Island.

- 49 Thami Mazwai cited an example of mainstream “media hypocrisy”. After the banning of *The World* in 1977, *The Star*’s editorial decried the banning but said it had always felt that *The World* had gone too far in terms of journalistic responsibility. There was also a feeling that the government would go for a black newspaper and ban it, but would not ban a white paper because parliamentary politics continued to dominate political coverage over the years. Parliament, Mazwai reminded Commissioners, was one of the few censorship-free zones in South Africa.

Accusations by black journalists

- 50 The following accusations from black journalists were collected from pre-hearing submissions and evidence at the hearing, and are listed by way of a checklist against which current practices can be measured.
- a Terminology: newspapers used terms such as ‘terrorist’ instead of ‘guerrilla’ to describe those fighting the liberation struggle.
 - b A selective approach: stories that made the police look like villains were spiked or rewritten. Furthermore, the black journalist’s version of a story was

always questioned. Stories featuring whites were given preference to those that involved blacks, even if the latter were more newsworthy.

- c Two days leave or pay was deducted when black journalists went on a march. White journalists were never penalised for protesting.
 - d There was an acceptance of the restrictions on the media under the states of emergency. Consequently, other organisations were left to challenge them.
 - e The actions of senior newspaper personnel suggested they were happy with curbs. For example, there were constant angry admonitions to 'tone down' or 'be objective', even though the stories were 100 per cent true. Numerous stories were spiked because they highlighted police and army atrocities in the townships.
 - f Even legal protests by black people were denied space in the papers.
 - g There was a lack of training for black journalists, and a denial of promotion because of lack of training.
 - h There were allegations that the apartheid mindset and hypocrisy continue to the present day.
 - i Hypocrisy of management: editorials decried apartheid, while practising it against black staff with regard to facilities and salaries.
- 51 An interesting addendum to the problems faced, particularly by black journalists, emerged in the accounts of what happened in the 1980s when the United Democratic Front (UDF) and the Azanian People's Organisation (AZAPO) were at war with each other. Tremendous pressures were put on black journalists by both sides involved in the dispute, making them terrified to write anything about the feud.
- 52 This lack of reporting had an unfortunate corollary. The communities concerned saw that their journalists were not reporting honestly and accurately on black issues and turned against them.

Discrimination against women

- 53 Former journalist and founder member of the Union of Black Journalists, Juby Met, and journalist Nomavenda Mathiane added their voices to what other black

journalists had said about how people of colour were discriminated against in the newsroom.

- 54 Mathiane highlighted the degree to which black women writers in particular were discriminated against. She said women were not given meaningful beats and were not promoted to senior positions, and that they were relegated to women's pages that dealt with beauty, health and socials. She also said training was given mainly to male journalists and that, while male journalists were offered overseas trips to widen their journalistic horizons, female writers had to organise such trips on their own and often had to take leave without pay when on such visits.

The Afrikaans press

- 55 The Afrikaans press declined to make a submission to the Commission. Instead, it provided the Commission with a copy of *Oor Grense Heen*, the official history of Nasionale Pers (Naspers).
- 56 Rather oddly in the context, the book repeatedly confirms that the various newspapers in the group were always pro-NP government institutions. The opening paragraph states candidly that the NP victory in 1948 meant that the company became a pro-government institution. The history concedes that *Die Burger*, for instance, promoted Verwoerd's ideals of bantustans from an early stage and that, after Sharpsville, the same newspaper advised that all positive aspects be speeded up. Occasionally, doubts about apartheid do surface but, in the main, the book reflects a total lack of concern for the company's support of the racist system.
- 57 Archbishop Tutu, opening the hearing, lamented the attitude adopted by the Afrikaans press. By not participating, he said, it would lose its case by default. He asked:

Is silence from that quarter to be construed as consent, conceding that it was a sycophantic handmaiden of the apartheid government?

- 58 The dissatisfaction of some Afrikaans journalists over the decision not to participate at the hearing was muted during the hearing itself. However, after the hearing the Commission received some 150 affidavits from individual Afrikaans-speaking journalists. These acknowledged the important role of the Commission and expressed disappointment at the Naspers decision not to appear. They believed

that the Afrikaans press had been an integral part of the structure that had kept apartheid in place, particularly in the way Afrikaans papers had lent their support to the NP during elections. The submissions maintained that, although the papers may not have been directly involved in violations, they should accept moral responsibility for what happened because they had helped support the system in which gross human rights violations occurred.

- 59 They said that “many Afrikaans journalists were deaf and blind to the political aspirations and sufferings of black fellow South Africans” and did not inform their readers about the injustices of apartheid. When knowledge about gross human rights violations became public, the journalists felt they had too readily accepted the denials and disingenuous explanations of the NP. Those who made submissions also sought forgiveness for their lack of action and committed themselves to ensuring that history would not repeat itself.
- 60 Professor Ari de Beer echoed the general tone of these submissions. He said he had felt compelled to approach the Commission because of the revelations at earlier Commission hearings, particularly those of Vlakplaas. Professor de Beer felt that he and many other “God-fearing” Afrikaners could not accept personal responsibility for specific gross human rights violations. Nevertheless, he did feel that there should be an acceptance of individual and collective responsibility for those violations committed under the ideological veil of apartheid, in the name of the Christian religion and Afrikanerdom. He expressed regret for keeping quiet about apartheid when he knew he should have actively protested against it. He challenged those who claimed that the Afrikaans press had nothing to answer for.
- 61 Former editor of the *Vrye Weekblad*, Max du Preez, added a stinging note:

They can protest as much as they want, but one truth remains: until the last few months of PW Botha's term as State President, Afrikaans newspapers never opposed the NP or their security forces on any important issue.

The alternative media

- 62 Throughout the period under review, the alternative media – some of it commercial, some not – attempted to challenge what was depicted in the mainstream press. Their continued revelations exposed the timidity of the bigger publishing houses in challenging the government and accelerating change. With predictable regularity, these publications were forced to close either through repeated banning of the

papers or their staff, or sabotage of their operations: for example, intimidation of printers or disruption of distribution.

- 63 A prime example of the use of legal pressure to harass and finally cause the closure of a newspaper was that of *Vrye Weekblad*. Pressure began before it even published its first edition. Its registration in terms of the Newspaper Registration Act was held back by the then Minister of Justice, Kobie Coetsee, pending a report by the security police. An official SAP document marked 'secret', given to the editor Max du Preez, recorded the former government's concern about the possible content and influence of the paper. Knowing the owners had very little money, government demanded not the customary nominal fee for registration of the newspaper, but R40 000.
- 64 In another secret document, the government revealed its intentions to harass the paper with legal action to ensure it was closed down. In 1988, the government took a strategic decision not to ban or close newspapers because of the negative publicity this generated and introduced a new tactic of bleeding the alternative media dry through the judicial system.
- 65 During the 1980s, while alternative publications owned by whites appear to have been subjected to legal action in an effort to have them closed down, the more community-oriented publications, funded mainly by donors, were more aggressively harassed and their staff members constantly detained and often tortured.
- 66 The South African Communist Party (SACP) submitted that, from the 1950s, banishment, bannings, harassment and the physical removal of political opposition, together with the seizure of presses and publishing equipment, had the effect of preparing the market for the commercial media. Genuine political opposition groups were prevented from running their own media.

■ THE MISUSE OF THE MEDIA BY AND COLLABORATION WITH THE STATE

- 67 Evidence given by state operatives at the hearing tended to support the allegations that the mainstream press was prepared to co-operate with government. Craig Williamson, for example, provided a copy of a confidential submission to the media, calling on editors to play down the UDF factor in South African politics. It stated clearly that this was the result of the decision of the State Security Council that the UDF, its officials and its patrons must be discredited.

- 68 Williamson gave information about another STRATCOM-type operation which involved taking senior members of the media to Special Forces bases on the South African border for a *bosberaad*² with the highest ranking officers of the military and intelligence agencies. The state's relations with the media were, he said, seen as a "macro continuum" from the owners of the media, to the editors who controlled the newspaper, right down to the dustbin cleaners who cleaned the dustbins at night and stuffed material in an envelope to be collected by agents.
- 69 Williamson also provided a photograph, taken on the Angolan border in July 1987, which contained virtually the entire general staff of the defence force, various government ministers and staff and Williamson himself, together with a number of highly placed journalists. The focus on that occasion was how South Africa and the newspapers would respond to what the Soviets were doing in Angola.
- 70 Writing about the SABC, the Bussieks stated that the corporation "generally took a conveniently simplistic attitude towards what amounted to deliberate distortion and suppression of facts in its coverage of unrest, defiance and resistance".
- 71 State agent John Horak related that, when he went to the SABC in the 1960s he did not do so as an infiltrator. The SABC knew that he was a police officer, having been told by General Venter that they needed someone on the premises. Horak also said that, technically, all who worked at the SABC were informers, because the Broadcast Act stipulated that the SABC had to support the government of the day.
- 72 Even more damning was the evidence of Vic McPherson, a STRATCOM head in the late 1980s, who in those days visited the SABC regularly. He said that, although the staff knew he was from the Security Branch and knew about the covert work he was involved in, he was accepted there. Agents were not needed at the SABC, he said, as most staff members supported the South African Police. He said the same applied at the *Citizen* newspaper.
- 73 The *Mail and Guardian* described how Jacques Pauw, engaged in researching for material for 'Prime Evil' (a documentary on CCB activities) in 1997, came across an interview featuring live footage of an *askari* (a guerrilla fighter 'turned' by the police) shot at Vlakplaas. "They [certain SABC journalists] denied its existence, but it is clear that some SABC journalists had access to Vlakplaas as early as 1987," Pauw said.

² Literally, 'bush summit', an extended planning meeting.

- 74 The hearing was given two further important examples of the often tortuous relationship between the state and the media, particularly the so-called 'opposition press'.
- 75 The first concerned the Newspapers Press Union (NPU), representing the major newspaper groups. The NPU came under considerable attack in both written and oral testimony at the hearing. One accusation from a prominent journalist went so far as to implicate the NPU in gross human rights violations. Jon Qwelane, speaking of the NPU's army and police agreements with government, asked:

Did the media owners, by their endorsement of Botha's madness, not help to delay the day of liberation? Can it be correctly said that the blood of those who were murdered by Botha's police and soldiers, in the name of total onslaught, is on the hands of the media owners? I say it can.

- 76 This may be considered an extreme view, but it did encapsulate the feelings of many of those involved in or monitoring the media at the time. The Commission had access to a chronology of events involving the NPU, which was compiled and submitted by the Freedom of Expression Institute (FXI). The chronology shows the stormy relationship that the NPU had with the government, simultaneously with its constant battle to appease it. It also reflects the degree to which publishing houses were prepared to go along with government thinking. (See Appendix 3 — NPU chronology)
- 77 Unfortunately, the NPU denied the FXI researcher access to its documents, insisting that it would make records available only to the Commission itself. Consequently, the Commission's researcher for the media hearing spent several days at the NPU offices. Although she did not peruse the minutes of every meeting held, she gained an insight into the workings of the NPU from those she examined.
- 78 Representatives of all South African newspapers attended NPU executive meetings. Representation was usually an editor/general manager and the managing director. The minutes reveal that the NPU was, above all, a business forum. Hence, at times, it seemed as if the deals done with government were conceived mainly to enable the papers to continue making a profit. Negotiations with government were, for example, especially intense before the introduction of television, mainly because of the fear that it would reduce advertising revenue. The main items on the agenda were generally the contracts with paper suppliers and the accreditation of advertising agencies.

- 79 The liberal English press defended its participation in the NPU and negotiations with government concerning, amongst other things, a statutory Press Council and agreements with government on defence and police matters. It asserted that this was the only way to prevent the government from bringing in restrictions that were even more draconian or even banning their papers.
- 80 The NPU's submission argues similarly that its intensive lobbying efforts in the various government forums prevented government from muzzling the press with direct censorship, the formal registration of journalists and other threatened restrictions.
- 81 The consistent attacks on the English press plus constant threats of closure bear this out to a degree. But the question arises: did the liberal press, by participating in the NPU and constantly responding to government threats, willingly participate in a system which allowed the government to control the flow of information? Furthermore, did their participation give the NPU agreements and negotiations a legitimacy they did not deserve? The manner in which the NPU was viewed by black journalists, for example, shows the contempt in which they held those who allowed the government to dictate the level of press freedom.
- 82 On its participation in the defence and police liaison committees, the repeated refrain – from the publishing houses and the NPU itself in a submission made after the hearing – was that these committees were seen as a way of improving the flow of information or “keeping the channels of communication open” in an increasingly closed environment. This view has been totally rejected by a number of researchers and writers.
- 83 Graeme Addison, for instance, wrote a thesis on South Africa's war. He maintained that the NPU was colluding with the government and that the most senior journalists were aware of this. “News manipulation was the order of the day, and the oft-repeated claim that our press was objective was nothing less than ludicrous.” This was the result of what he referred to as the “gate-keeping” procedures of the press and broadcast stations in their symbiotic relationship with the public relations officers of the SADF.
- 84 Addison believes the mass media performed as propagandists for the army and government through, amongst other things, the defence agreement between the Minister of Defence and the NPU. The combination of law and agreement pulled the media in line with the government's ‘total strategy’ of security action and propaganda to defend apartheid. This doctrine was well publicised and no editor

was unaware of its implications. By colluding with the system of censorship, the media helped support apartheid.

- 85 Jolyon Nuttall, a previous president of the NPU who gave evidence at the hearing, served on the liaison committees. He said they discussed mainly matters of policy and principle. He confirmed that defence and police officials used them to brief editors and management on the state of the nation from their perspective. However, he said, most NPU members were alert to attempts to whitewash the situation or to brainwash them.
- 86 One of the biggest indictments against the Press Council was its ruling against the *Rand Daily Mail* on the Biko issue. It found the *Mail* guilty of the government's accusations of "unfair and malicious comment" when the paper ran a headline saying: "No sign of hunger strike – Biko doctors". The newspaper was twice brought before the council on charges of printing unsubstantiated facts concerning the Biko case. On both occasions, the Press Council ruled in favour of the government and reprimanded the newspaper.
- 87 The NPU's reaction to the banning and arrests of Black Consciousness organisations on 19 October 1977 – Black Thursday – is also worth noting, as the bannings included a number of newspapers which were members of the NPU and a number of editors. NPU documents reflect that an urgent meeting was held on that day and for several days to come. However, perhaps because it involved black papers and journalists, their enthusiasm to pursue the issue with government petered out and nothing appears to come of their initial "indignation".
- 88 The second example of the relationship between the media and the state was that of the closure of the *Rand Daily Mail* in 1985, which was a blow to the progressive forces in South Africa. The conflicting reasons for its closure, hotly debated for a decade, were again discussed at the hearing: was it closed for commercial reasons or was it forced to close by the government?
- 89 Government operative John Horak said it was important for government that the *Mail* should not die, based on the argument that South Africa could not be accused of being dictatorial if an internationally recognised newspaper, vehemently opposed to government, continued to exist. Horak blamed the liberal establishment for the paper's demise and said he knew of campaigns where advertisers were told that, by advertising in the *Mail*, they would be promoting Communism.

- 90 Raymond Louw was adamant that Horak was incorrect in his belief that the government did not want the *Mail* to die. If this had been so, he said, there would not have been a failed attempt by Louis Luyt to purchase the *Mail*. Furthermore, if this was so, why did the government later ban the *Weekly Mail*, which had by then gained similar diplomatic value, and the *New Nation*?
- 91 Louw believed the owners of the paper were “got at” by the government. It would seem that a special emissary from the *Broederbond* approached the paper informing it that the government was going to change its policies drastically and that it did not want a newspaper like the *Rand Daily Mail* around to confront and embarrass it when it made these changes. Louw said he felt that the owners accepted the argument and that it was a political closure. Although any connection has been denied, he felt it was significant that M-Net, soon to be owned by a consortium of newspapers, got its licence in the same month as the *Mail* was closed.
- 92 The closure of the *Rand Daily Mail* left a vacuum that was later only partially filled by the alternative press in the late 1980s. In addition, the *Mail*'s closure had a self-censoring effect on other English-language papers.

Spies in the newsrooms

- 93 State operative John Horak explained that there were four basic categories of media spies: agents, informers, sources, and ‘sleepers’. Craig Williamson confirmed this. An agent was a professional police officer with a job to do. Informers gave information either voluntarily or were recruited. He identified two categories of informers: those who were ideologically totally opposed to what the organisation was doing and those who did it for the money. There were also those who did it to get at colleagues for reasons such as competing for promotion. ‘Sleepers’ were long-term plants, people who knew things but would only provide information if their consciences were bothering them.
- 94 Vic McPherson, initially an intelligence officer, was Unit Commander of Covert Strategic Communications in the SAP from 1989 to 1990. According to him, the police became involved in the media during the 1980s and 1990s because the ANC and other opposition groups had launched a “venomous attack” on the South African Police (SAP), bringing it into “disrepute”. The objectives of the media operation were: image-building for the police; promoting the successes of the Security Branch in the media; counteracting enemy propaganda, and giving media prominence to attacks against the community.

- 95 To achieve these objectives, McPherson said the SAP recruited journalists who supported their cause. This enabled them to place prominent articles and carry into effect the objectives of discrediting organisations and individuals and uncovering negative aspects (such as corruption in their ranks) in order to destroy public sympathy. He had forty journalists who were his contacts: two were police informers, four were paid journalists, four were informants whom he paid on occasion, ten were friends and twenty were used without their knowing it.
- 96 Williamson provided documentation on how the state, in an attempt to discredit UDF patron Allan Boesak and diminish his political effectiveness, exposed his affair with Ms Di Scott.
- 97 Pat Sidley said the subject of spies in newsrooms was one of great concern, total distaste and impotence, as journalists were unable to persuade newspaper management to share their discomfort. In its defence, management said its lack of action against suspected spies was because there were constant whispering campaigns and rumours, all of which could not be taken seriously. The Commission, however, drew attention to John Horak's testimony, in which he said he was a spy in the newsroom for almost twenty-seven years. He called himself a "listening post": people could come to him, and he could put them in touch with other people. Throughout his testimony, Horak asserted that he felt sure that management at the time knew he was a spy, even offering examples where it must have been clear to them that he was a state operative. A previous editor, however, said that he had confronted Horak who had flatly denied that he was a spy.
- 98 Although the media-room spies denied ever having being involved in gross human rights violations, poet and writer Don Mattera said that Horak had started whispering campaigns, suggesting that certain left-wing journalists were informers. He even suggested that Mattera was a CIA agent. Mattera said Horak's work was to vilify and destroy. For Mattera, this resulted in almost 350 raids on his house and 150 terms of detention. He added that Horak carried a gun and was allowed to bring it to work at *The Star*.
- 99 John Horak was the first journalist at the hearing openly to admit that he had been a spy. The second was Craig Kotze, who had constantly denied being a state operative while working on *The Star*. Unlike Horak, Kotze said he had never concealed where his sympathies lay. He openly attended military camps and wrote in a manner that reflected the SAP in a positive light.

■ CONCLUSION

100 The myriad of apartheid laws which controlled the media workplace may explain some of the racism black journalists experienced in the newsrooms of the major publishing houses. It would seem, however, that discrimination went way beyond what was required by apartheid legislation. Individual testimony to the Commission confirmed this, validating the allegations made by black journalists.

101 Evidence presented to the Commission tended to support what the Media Monitoring Project noted in its submission:

The English press, whilst predominantly positioning itself independently from the government, and significantly opposing the government in certain instances, continued to report within the political, social, and economic discourse defined by the apartheid state. The state legitimised itself within that discourse, and by not challenging its centrality or providing significant oppositional utterances to it, the English press wittingly or unwittingly validated the apartheid state.

102 Thus, even though some of the media may have opposed the government, the social and political system created by apartheid was sanctioned by the media. The media analysed society from inside that system and did not provide alternative perspectives and discourses from the outside.

103 As predicted by the chairperson of the Commission at the start of the media hearing, the absence of the Afrikaans press led to its being condemned as an extension and willing propaganda organ of apartheid.

104 By not reporting honestly on the human rights abuses of the NP government, the Afrikaans press as a whole stands condemned for promoting the superiority of whites and displaying an indifference to the sufferings of people of colour. Despite a limited number of individuals who rejected the system, and despite examples of resistance to the policy of slavish reporting on government and race related issues, exceptions to the long history of actively promoting the former state and its policies were minor ones. (Their heirs, significantly, made a significant gesture towards reconciliation by making personal submissions of regret following the absence of their employers from the hearing.)

105 At the SABC, a blatantly pro-government and apartheid institution, it did not come as a surprise that black people were treated so appallingly. Here management

and staff went beyond anything that was laid down in law and gave their own racial prejudices free rein. The notorious section 14 may have provided a regulatory framework, but it did not direct white staff to behave in the manner in which they did. For instance, the practice of *sjambokking* staff – something that was not public knowledge before the media hearing — was abhorrent and will, it is hoped, be further investigated by the SABC itself.

- 106 The mainstream media also ignored the question of gender. This comment from the Independent Newspapers submission indicates just how unimportant the issue was perceived to be within the male enclave of management:

Why were there no women editors? The simple reason was society dictated it. There were no all-round women journalists. It was not that the newspapers kept them out, there were not any trained in society.

- 107 Asked about this comment at the hearing, the representative gave an inadequate response:

It is an enormous gap and I apologise for it. It is something I am extremely uncomfortable about and something, I think, we will in future work even harder to fill.

- 108 An additional point was made at the hearing. The influx of Rhodesians of a particular mindset at the time of Zimbabwe's independence in 1980 contributed to reporting in the mainstream media which actively tried to advance the cause of white supremacy in the region.

- 109 The hearing underlined that the relationship between the government, the state and the media continues to be problematic. As one journalist put it:

I don't think we want to have a relationship with politicians, but I think the line should be open. I think in an age of transparency, we should be able to pick up the phone and ask for a statement. That is what we want. I don't think we are looking for a lovey-dovey relationship with politicians, no. As journalists, it is to report what is going on. But if there is a need for them to respond to our stories, then they should do so.

- 110 Two initial questions were asked before the media hearing began. Could the media under apartheid be held responsible for the perpetration of gross human rights

violations? Moreover, to what extent could they be held responsible for creating a climate in which violations occurred unhindered?

- 111 Former *Vrye Weekblad* editor, Max du Preez, who made the final submission to the hearing, provided possibly the most direct and complete answer to both questions:

If the mainstream newspapers and the SABC had reflected and followed up on all these confessions and revelations, every single one subsequently proved to have been true, the government would have been forced then to stop, to put a stop to the torture, the assassinations and the dirty tricks. It would have saved many, many lives.

■ FINDINGS ARISING OUT OF MEDIA SECTOR HEARINGS

The Commission finds that

- 112 State restrictions on the freedom of the media played an important role in facilitating gross violations of human rights during the period covered by its mandate. These restrictions grew in intensity until more than 100 laws controlled the right to publish and broadcast. Although not themselves a gross violation of human rights as defined by the Act, the restrictions denied the right of South Africans to a free flow of information and ideas. At their worst, particularly during the successive states of emergency after 1985, the restrictions amounted to pre-publication censorship of information on state-inspired and state-sanctioned violations.
- 113 The management of the mainstream English language media often adopted a policy of appeasement towards the state, ensuring that a large measure of self-censorship occurred. Failure by the mainstream media to affirm its independence from the state is evidenced in the apparent 'agreements' between the Newspaper Press Union and the former government. The role of the Newspaper Press Union – not least concerning security matters – reflects willingness by the mainstream media not to deal with matters that exposed the activities of the security forces.
- 114 Newspaper management also failed to provide sufficient moral, institutional and legal support for journalists who chose not to submit to the media restrictions either imposed or expected by the state. It is noted that in some instances, not least in the banning of *The World*, those responsible for the management and editorial policy of the mainstream media failed to affirm the freedom of the

press in a satisfactory manner. Evidence also suggests that the closure of the Rand Daily Mail occurred as a result of management succumbing to pressure from government.

- 115 The Afrikaans media (at least until the last few months of PW Botha's tenure as State President) chose to provide direct support for apartheid and the activities of the security forces — many of which led directly to gross human rights violations.
- 116 The employment practices of the newspaper industry, with few exceptions, reflected the racial and gender discrimination that characterised South African society. Insufficient was done to provide suitable training and opportunities for the promotion of black people and of women, especially in the area of management.
- 117 The SABC violated the Broadcast Act of 1976, which required it to “disseminate information” to “all national communities ... unambiguously, factually, impartially and without distortion.” The Commission expresses concern that the *Afrikaner Broederbond* was able to exercise the kind of influence that it apparently did on SABC broadcasting policy. The SABC willingly co-operated with the security forces of the former state in the conscious employment of and/or co-operation with SAP and SADF spies, making it a direct servant of the government of the day.
- 118 The labour policy of the SABC, as expressed in Section 14 of the Staff Code and the apparent alternatives to dismissal for violations of the code, is a flagrant violation of the basic human rights of workers. Employment discrimination based on race and gender, and prevalent throughout South African society, was another feature of SABC employment practice.
- 119 The racism that pervaded most of white society permeated the media industry. This is supported by ample testimony presented to the Commission concerning the failure of many white journalists to delve thoroughly enough into allegations of gross human rights violations involving black people.
- 120 With the notable exception of certain individuals, the mainstream newspapers and the SABC failed to report adequately on gross human rights violations. In so doing, they helped sustain and prolong the existence of apartheid.

■ APPENDIX 1 ADDITIONAL CONCERNS

- 1 No report can do justice to the many submissions received by the Commission and the testimony given at the hearing. This report, therefore, contains several serious omissions, including, *inter alia*, reference to the following issues.
 - a **Reporting on Sharpville.** A detailed study of how the Sharpville massacre was reported in the South African press: for example, how the black reporters' efforts were ignored and the white reporters' versions used.
 - b **Reporting on June 16.** On 16 June 1976, black journalists came into their own. They were the people able to enter townships and report on what was happening and the white mainstream media had, finally, to acknowledge their contribution. Yet their reports were often not attributed to the black journalists whose information was, they allege, used by their white colleagues to sell stories overseas.
 - c **Biko's death and 'Black Thursday'.** These were both milestones in media history and more attention should have been paid to them.
 - d **Mau Mauing the Media.** This records how the media failed to cover the issue of violence perpetrated by the liberation forces against ordinary citizens, councillors, the security forces, and informers.
 - e **The student press.** A detailed submission on the harassment of those involved in this sector. The Commission would like to have given more recognition to the student press's contribution to freedom of the press at the hearing.
 - f **Militarisation of the media and our society.** Although this is touched on in this chapter, it could have occupied a much larger portion of it.
 - g **Coverage of political violence and the 'third force'.** The Commission asked the publishing houses to address, at the hearing, the issue of how their publications covered the violence. Unfortunately, this was not adequately done. For example, the manner in which the media covered the violence, possibly because the casualties were usually black, did not always convey how desperate the situation was. The media also failed to investigate adequately allegations of 'third force' activities, which were subsequently proved correct.

■ APPENDIX 2: MEDIA UNIONS AND ASSOCIATIONS

The South African Union of Journalists (SAUJ)

- 1 The SAUJ was formed in 1920 as a home for white journalists. In 1958, legislation was passed which precluded mixed trade unions. The SAUJ tried on numerous occasions to get government to exempt them from this legislation to allow them to have black members, to no avail. In the 1970s, Clive Emdon as president began to campaign for de-registering the union, which finally occurred in 1977. Only then could black journalists join the SAUJ.
- 2 The SAUJ subscribes to the International Federation of Journalists (IFJ) code of conduct and ethics which are, in the main, respect for the truth and for the right of the public to know the truth.

Union of Black Journalists (UBJ)

- 3 The UBJ was formed in 1972 to restore black journalists' pride and dignity that they felt was undermined in the newsroom. It was also formed to provide a home for black journalists because the then existing union, the SAUJ, excluded black journalists.
- 4 On 19 October 1977, the UBJ was banned, together with a number of black political organisations. A number of black journalists and editors were detained, and UBJ stationery and equipment was confiscated.

Writers Association of South Africa (WASA)

- 5 In 1978, following the banning of the UBJ, black journalists got together and formed WASA which was to continue where UBJ had left off.

Media Workers Association of South Africa (MWASA)

- 6 In 1986, at a conference in Cape Town, WASA changed to MWASA in order to broaden the organisation and make it all-inclusive of workers in the media. WASA catered for writers only, which was felt to be elitist. MWASA was also an effort to swell numbers for bargaining purposes. It was argued that journalists were too few to influence production should they embark on a strike. The 1990

Star newspaper strike is an example where production was affected when labour downed tools.

- 7 MWASA embraced the Black Consciousness philosophy and excluded whites. The membership argued that news, current affairs and history was seen only through the eyes of white writers. In later years, at a Cape Town conference in 1990, delegates moved for the opening up of the union to white membership, arguing that it was time the union became non-racial.

Association of Democratic Journalists (ADJ)

- 8 A group of journalists who saw themselves as ‘progressives’ formed the ADJ as part of the UDF drive to get as many organisations on board as possible. The ADJ’s life-span was short, largely because there were already two strong media unions — the SAUJ and MWASA — that were already active.

Forum of Black Journalists (FBJ)

- 9 The FBJ was formed in 1997 by black journalists and is open only to black journalists. Its objective is to provide journalists with a platform and opportunities to reflect critically upon issues of political, socio-economic and cultural importance, as well as engaging its participants in defining and articulating an agenda not only for black journalists but also for the society as a whole.

South African National Editors Forum (SANEF)

- 10 This group was formed in 1996 following negotiations between the predominantly white editors group (the Conference of Editors) and the Black Editors’ Forum. The group sees itself as a link between South African citizens and the world. Their policy statement, drafted in 1997, states:

We strive to promote stories told in a multiplicity of African voices, stories that are well-researched, contextualised, analytical, interpretative in dialogue and with respect for an audience that is complex and diverse.

■ APPENDIX 3

NEWSPAPER PRESS UNION — CHRONOLOGY³

- 1 In the 1950s, the English press was regularly attacked by NP members, including the Prime Minister Strijdom and later on Verwoerd. Warnings concerning the possibility of a press council and legislation to control the press surfaced and, in Parliament and at party congresses, the NP constantly complained about the English press.
- 2 Cas Greyling, NP MP for Carletonville, was the most vociferous agitator against the press throughout his time in Parliament, making repeated calls for legislation to control journalists. In 1959, he is reported as saying that not only was it right to silence ANC leaders such as Albert Luthuli and Oliver Tambo, but that most of the newspapermen sending reports overseas should also be banned. He said they were guilty of sabotaging the government's policy of apartheid. This is typical of the regular remarks made by him and other members of the NP government.
- 3 In 1951, DH Ollemans, Argus Chair, responding to the Van Zijl Press Commission, proposed that a voluntary press council be established. He received little immediate support but pressed for the idea in years to come.
- 4 Early in 1962, the NPU denied "any suggestion of outside interference" or pressure to set up the Press Board of Reference (eventually to become the Press Council). Soon after this, it held a special meeting at which it adopted a constitution for a Press Board of Reference and a code of conduct for journalists.
- 5 According to reports, support for the Board and code came from the Argus group (Argus Chair Leyton Slater steered the scheme through) and Afrikaans newspapers, while most of the SAAN representatives were opposed to it. The main difference between the South African code of conduct and that of other countries was that journalists were not required to observe professional secrecy to protect sources of information. It also contained a political injunction that journalists should "take cognisance of the complex racial problems of SA and the general good and safety of the country and its peoples."
- 6 The SASJ, forerunner to the SAUJ, significantly, was excluded from negotiations between the NPU and the government, and felt that while the press in other countries might indeed have a similar system of self-regulation, the South African system established at this time was not operating in a democratic context.

³ Based on an FXI document.

Later, in 1971, it did recognise the Press Board of Reference.

- 7 In 1963, the Film and Publications Act established the Publications Control Board. NPU publications were not, however, subject to this law.
- 8 In 1964, the second report of the Van Zijl Press Commission claimed that the Press Board of Reference did “not satisfy the fundamental requirements of a body designed to discipline or encourage self-control of the press”. It recommended the formation of a press council with statutory powers and the compulsory annual registration of journalists and newspapers with this council. It should also be able to order its judgements to be published, and impose fines of unlimited amounts. A compromise was reached with the establishment of a Board of Reference empowered to reprimand.
- 9 After the assassination of Verwoerd in 1966, Vorster came to power and the attacks on the English press continued with Prime Minister Vorster ‘playing’ what has been described as a “cat-and-mouse game” with the media. By constantly threatening the press, he was able to force it to apply self-censorship incrementally over the years.
- 10 In January 1967, the Minister of Defence and the President of the NPU entered a controversial agreement, supposedly to ensure regular contact between the NPU and the SADF and ARMSCOR.
- 11 In October in the same year, an NPU/SAP agreement provided for press identity cards.
- 12 In 1973, Vorster repeatedly threatened to amend the Riotous Assemblies Act to enable the courts to “deal properly” with people who were sowing enmity between the races. Newspapers were clearly the target.
- 13 In 1974, despite claims to the contrary, Slater, who was chair of the NPU at the time, was involved in secret talks with government regarding a revised constitution and code of conduct. The amended constitution would allow the council to impose fines of up to R10 000 and required all members of the NPU to accept the jurisdiction of the council. The new code of conduct was even more controversial. It demanded of newspapers

(1) due care and responsibility concerning matters which can have the effect of stirring up feelings of hostility between racial, ethnic, religious or cultural groups in South Africa, or which can affect the safety and defence of the country and its peoples, and

(2) due compliance with agreements entered into between the NPU and any department of the government of South Africa with a view to public safety or security or the general good.

- 14 The Argus Group and its editors supported the amendments, believing them to be an effort to keep control of the press in the face of the threatened legislation. SAAN editors opposed them, as did most local chapels of the South African Society of Journalists (SASJ).
- 15 On 21 August 1976, the agreement between the NPU and the Commissioner of SAP was signed.
- 16 Early in 1977, NPU was given copies of a proposed Newspaper Press Bill, which it rejected out of hand, after which talks with the government broke down. (Some view this move as the first time that the Afrikaans and English press were united in their opposition). Undeterred, Vorster persisted and, through threats, eventually achieved the desired effect: the NPU's undertaking to include much of the legislation in its own revised code of conduct.
- 17 On 19 October, the government declared eighteen anti-apartheid organisations unlawful and more than fifty black leaders – mainly from the Black Consciousness Movement – were arrested. A large number of black journalists were also arrested. The UBJ was banned.
- 18 In November, a NPU delegation met the prime minister and other cabinet ministers to voice the NPU's strong objections to the Press Council being empowered to act in a "preventative way", its unwillingness to control in any way foreign correspondents in South Africa, its objections to a government appointed chair of the press council, its objection to allowing the Press Council to prohibit a report on the basis of a complaint, and others.
- 19 In 1978, in a NPU delegation meeting with the SAP, a system for accrediting senior journalists was discussed and a memo prepared by Tom Vosloo was circulated. SAAN's general manager Raymond Louw, however, challenged the right of an

NPU delegation to accept suggestions without the approval of the executive council. He noted that the accreditation system would censor and allow the police to keep certain kinds of information from the public by creating a circle of “in-people”:

- 20 Leading representatives of the Afrikaans press called for fewer and not more restrictions on the press in their representations to the Steyn Commission. Once again, the white press appeared to be united on an issue.
- 21 On 17 September 1980, amendments to the agreement between the Minister of Defence and the NPU were signed. The new agreement set up a joint liaison committee to meet at least once a month “to consider matters of policy and principle” including the amendment of the agreement itself. The agreement provided that the press “must abide by” any request by the defence minister that “no reference should be made to the fact that he had been approached and refused to comment, as even a ‘no comment’ reply could embarrass him”. Additionally, the Minister of Defence was given a right of pre-publication comment. The guidelines further provided that reporters “should understand that there are to be no arguments with the Minister or the [relevant] officers on matters that have leaked out somewhere in their publication. A request that a report or comment should not appear is accepted as such.” In 1980, participation in this agreement was extended to the state-owned arms company, ARMSCOR, which was given a seat on the liaison committee.
- 22 On 12 August 1981 the NPU-police agreement was amended.
- 23 In the prior discussions, there appears to have been widespread unease about the increased powers given to the police. In a circular to members, the NPU notes that the NPU delegation which negotiated the final agreement included three editors, and that all were satisfied that the new agreement was the best possible and in several respects an improvement on the previous one. It notes that there was strenuous resistance to attempts to compel editors to disclose names of sources. The circular encourages members to test the agreement, and reminds them that there is no statutory backing for it.
- 24 In 1981 PW Botha made a veiled threat in parliament:

...we have a right to be proud of the large measure of freedom which the press continues to enjoy here... But I wish to repeat my appeal... Let those who, in common with myself and the government, value sound working relationships

between the public, the press and the authorities in South Africa, now offer their co-operation to help put an end to certain abuses which have become unbearable and a threat to the nation.

- 25 In response to the Steyn Commission, the government tabled a Journalists' Bill in Parliament. It was vehemently opposed by the NPU. After five months of bargaining between the Minister of the Interior, Chris Heunis and the NPU, government withdrew the Bill. The proposed Journalists' Bill would have required all journalists to be listed on a "roll of journalists". They would need certain qualifications and have to pass certain examinations in order to practise. No one who had been convicted of "any subversive activity" would be allowed to practise as a journalist. Black journalists would have been particularly vulnerable.
- 26 The NPU then agreed to set up a new Media Council, this time with the powers to reprimand and fine journalists, though not strike them from a register. The government would formally recognise this body. Peter McLean, chair of the NPU, said that the support shown by Afrikaans publishers was decisive in this compromise.
- 27 In July 1982, the Registration of Newspapers Amendment Act was passed. Key provisions were that the Minister of Internal Affairs could cancel the registration of newspapers if the publishers did not subject themselves for disciplinary purposes to the NPU's new media council. However, in February 1983 Minister of Home Affairs, FW de Klerk, said that the government would keep its promulgation in abeyance to give the South African Media Council — planned by the NPU and the Conference of Editors — a chance to prove itself.
- 28 On 1 November 1983, the South African Media Council was established. The SABC, the SASJ and MWASA all declined to become members. At its November congress, the South African Students Press Union (SASPU) opposed the establishment of the Council.
- 29 On 2 November 1985, emergency regulations were published which effectively outlawed television coverage of township unrest. Print journalists would only be allowed to cover these events if they were accredited, and had to be escorted by the police.
- 30 On 12 June 1986, a national state of emergency was declared with new regulations severely limiting the freedom of newspaper journalists and editors as well as

photographers and radio and television broadcasters. During this time, the government, in discussions with the NPU and the Media Council, was attempting to persuade the mainstream press to submit itself to a revised Media Council code of conduct in exchange for exemption from the emergency regulations. Within the NPU, proprietors were willing to do so, while some editors were not. Consequently, it informed the government that it could not agree on the proposed changes to the Media Council constitution.

- 31 The government's efforts to tempt the NPU into this agreement were seen – along with the confidential discussions between government and the NPU – as part of a strategy to secure the support of mainstream newspapers against the vigorous alternative press.
- 32 On 11 June 1987, the state of emergency was re-imposed. Police powers in this emergency were substantially augmented. The partially successful attacks on the media regulations of the 1986 emergency led to restrictions being reintroduced in the 1987 regulations.
- 33 On 22 July 1988, at a meeting called by the Anti-Censorship Action Group and The Save the Press Campaign, it was agreed that journalists and agencies who registered in terms of the latest emergency media regulations could be considered government agents.
- 34 On 9 June 1989, the state of emergency was reimposed. Media regulations similar to those of 1988 were promulgated. They were perceived to be the "application of prior censorship in its most stringent form."

Institutional Hearing: Prisons

■ INTRODUCTION

- 1 As an institution of the state, prisons – together with the police, the judiciary and the security apparatus – were an integral part of the chain of oppression of those who resisted apartheid.
- 2 Numerous statements to the Commission provided extensive evidence of gross human rights violations suffered by prisoners, either in detention or serving prison sentences. This testimony supported the considerable body of published accounts that shed light on the particular role played by prisons in the period under review. It also highlighted the irony that many of the leaders of our new democracy spent long years in prison because of their opposition to apartheid.
- 3 In a significant way, prisons were a microcosm of the society outside. They were protected from scrutiny by law and driven by a system that was determined by the nature of the society they protected. As such, they provide an important window on the nature of the former state. The special hearing was an attempt to open that window.

■ PREPARATION FOR THE HEARING

- 4 Choice of venue was important in providing a symbolic focus for the hearings. The first and obvious choice was Robben Island, but unfortunately this proved impossible because of logistic problems and cost factors. It was decided that the Johannesburg Fort was an equally appropriate symbol of political resistance. Its former inmates included Mahatma Gandhi and President Mandela and, as the notorious 'Number Four' prison, it played a significant part in the lives of many apartheid detainees and prisoners, male and female. The hearing was held in the courtyard of the Fort, in a marquee erected alongside the former isolation block.
- 5 The two-day hearing at the Fort was made financially and practically possible through the assistance of the Human Rights Desk of the Gauteng Greater Metropolitan Council.

Focus

- 6 Preparatory discussions led to a decision to distinguish between common law criminals and political prisoners. Political prisoners were particularly disadvantaged by the apartheid system: their imprisonment was retributive and punitive, making no pretence of rehabilitation. Because the focus of the Promotion of National Unity and Reconciliation Act (the Act) was on the political conflicts of the past, it was decided that the hearing should concentrate on the experiences of political prisoners.
- 7 It was also decided that the hearing should focus on the testimony of sentenced political prisoners rather than detainees, for reasons discussed below. The inevitable effect of this restricted agenda was that there were gaps in the testimony heard.

Pass law offenders

- 8 The first of these gaps concerned the experiences of pass law offenders who, for many of the years under review, formed a large proportion of the prison population – as high as one in every four inmates during the 1960s and 1970s. A strong argument was made for the inclusion of this category of common law prisoners in the hearings.
- 9 Pass law offenders were sent to prison, not because they were criminals, but because they did not meet the administrative requirements of a racist, apartheid law. The result was that a large number of people were sent to prison for offences that would not have qualified as criminal anywhere else in the world. Moreover, the treatment of pass law offenders could well be interpreted as a human rights violation, especially considering the nature of prison life at the time. Prisoners of all races experienced over-crowding and harsh conditions, but conditions were particularly brutal for black prisoners. In addition, gangs dominated the non-political sections of prisons. There was thus a strong probability that offenders, especially young and first-time offenders, would be drawn into gangsterism. Prisons thus became a base for the criminalisation of a significant part of at least two generations of young South Africans.
- 10 However, it was decided that the pass laws and their effects fell outside the Commission's mandate, especially given the requirement that every violation had to originate within a political context. This decision was not, however, a comfortable one for the group planning the hearing, especially in the light of the devastating effect of the pass laws on the lives of so many South Africans.

Detention without trial

- 11 The second gap concerned detention without trial. There were practical rather than legal reasons for excluding detention from the prison hearings. The working group had to take into account the fact that only two days could be allocated to the hearing, putting immense strain on an already overloaded programme. In addition, a number of testimonies about experiences under detention had already become a regular feature at human rights violations hearings around the country, the case of Steve Biko being an important example.
- 12 The exclusion of detentions from the hearing, however necessary, was unfortunate. The Human Rights Committee¹ has estimated that some 80 000 South Africans were detained between 1960 and 1990, up to 80 per cent of whom were eventually released without charge and barely 4 per cent of whom were ever convicted of any crime. Witnesses before the Commission testified about the many different ways in which detention was used as a measure of repression by the state, dating from the passing of the notorious 90-day detention clause in May 1963.
- 13 Prisons played a significant role as the prime site for detention, whether detainees were held for interrogation purposes (particularly in the early 1960s and again between 1976 and 1977), as a preventive measure (as in 1986, where it affected whole communities), or as a deliberate form of intimidation (in the 1980s). Frequently, detention was accompanied by torture and, in all too many cases, death. A paper written as early as March 1983 explained²:

There can be little doubt that the security police regard their ability to torture detainees with total impunity as the cornerstone of the detention system. It put the detainee at complete mercy for the purpose of extracting information, statements and confessions, often regardless of whether true or not, in order to secure a successful prosecution and neutralisation of yet another opponent of the apartheid system. Sometimes torture is used on detainees before they have even been asked their first question in order to soften them up. Other times, torture is used late in the interrogation process when the detainee is being stubborn and difficult.

- 14 As many as 20 000 detainees are thought to have been tortured in detention. At the same time, seventy-three deaths of detainees held under security legislation

¹ Human Rights Committee (1998), *A Crime Against Humanity*, edited by Max Coleman.

² Human Rights Committee (1998), page 55.

are recorded.³ Here again, the working group found itself in difficulty. In many cases reported to the Commission, it was not possible to determine under what legislation a detainee had been held – partly because there was no specific question to that effect in the initial questionnaire and partly because the victim's family often did not itself know. It was thus not possible to establish whether many individual cases were the result of 'political conflict', as was required by the mandate of the Commission. In addition, it is clear that many political cases were, in fact, treated as common law prosecutions, such as theft, arson, malicious damage to property and even murder. A senior government prosecutor, for instance, admitted that he "would preferably prosecute under the common law rather than under statutory law, because nobody can really make propaganda against the common laws whilst you can make effective propaganda against the statutory [law]"⁴.

- 15 It was therefore decided to exclude deaths in detention from the prison hearing, on the grounds that these cases would be heard in general victim hearings. The relationship between prisons and the judiciary was excluded because it was dealt with at the hearing on the judiciary.

Farm prisons⁵

- 16 Another gap was the notorious farm prisons system about which nobody came forward to give evidence. The farm prisons system ensured that farmers were supplied with a cheap supply of labour. African people who failed to produce their passes were, in theory, offered the option of 'volunteering' as farm labour in exchange for having charges dropped against them. Arrests for failure to produce a pass became a rich source of labour for the farms. The General Circular 23 of 1954, issued by the Department of Native Affairs stated:

It is common knowledge that large numbers of natives are daily being arrested and prosecuted for contraventions of a purely technical nature. These arrests cost the state large sums of money and serve no useful purpose. The Department of Justice, the South African Police and this Department have therefore held consultations on the problem and have evolved a scheme, the object of which is to induce unemployed natives roaming about the streets in the various urban areas to accept employment outside such urban areas.

³ See the appendix to this chapter, which contains a list of deaths in detention.

⁴ See Buntman, Dr Fran (1997), 'Between Nuremberg and Amnesia: Prisons and Contemporary Memories of Apartheid', unpublished paper presented at African Study Association meeting, Columbus Ohio.

⁵ The information in this section is taken from Joel Carlson's autobiography, *No Neutral Ground*, New York: Thomas Y. Crowell Company, 1973.

- 17 The prisoners were not taken to court but to labour bureaux where they would be induced or forced to volunteer. Joel Carlson, a Johannesburg attorney, uncovered some of the gross violations of human rights that resulted from the system. An affidavit by Robert Ncube in the late 1950s stated:

After I had been there [on a farm] for about four months I noticed one day a boss boy, Tumela, who was only about sixteen years old, beating one of the workers who was cutting firewood. After the assault I noticed this man's nose was bleeding a lot. The man sat down and his nose continued to bleed and he was left there until we were locked up at six o'clock. The following morning he was unable to get up and work. He was shivering all the time. He did not work for three days and on that Saturday morning he died. The boss boy, Philip, told four of the workers to carry him into the room where the dead are kept and the body was left there until Monday morning. On Monday afternoon about half past four, I and seven others, including Philip, carried the body and buried it on the farm. There were other graves where we buried him. I never saw a doctor or the police come to see the body before it was buried.

- 18 As a result of the publicity around this and other cases, the farm labour scheme was suspended. However, within weeks, the government passed an amended Prisons Act of 1959, providing for short-term offenders to be processed quickly through the courts and sent to the farms. The act provided that the farms be considered prisons and that it was a criminal offence to publish anything about prison conditions without the prior consent of the Commissioner of Prisons.

■ THE ORGANISATION OF THE HEARINGS

Themes

- 19 Despite these exclusions, the programme for the two-day hearing at the Fort was packed. The themes highlighted for the hearing were:
- a the main political prisons: Robben Island (for blacks), Pretoria (for whites) and Barberton (for women);
 - b the treatment of women prisoners;
 - c capital punishment;

- d conditions in homeland prisons;
- e health in prison;
- f conditions in the 'camps' outside the country.

Witnesses at the hearings

- 20 Testimony was heard from twenty-five witnesses during the two-day hearing. Most witnesses had experienced prison first-hand, either personally or through their immediate families. In addition, evidence was heard from a number of specialists. These included Ms Paula McBride, a regular visitor to death row; Dr Judith van Heerden, an expert on prison health; Mr Benjamin Pogrund, the journalist most closely involved in the prison trials of the 1960s and 1970s, and Mr Golden Miles Bhudu of the South African Prisoners' Organisation for Human Rights (SAPOHR).
- 21 Preliminary discussions were held between representatives of the Commission's working group and the Department of Correctional Services, including meetings in Pretoria and Cape Town. Despite attempts to involve the Department, it eventually declined to participate in the hearing, although Warrant-Officer Steinberg, a warder who had served on death row, appeared in his individual capacity. The absence of the Department was unfortunate as it excluded the possibility of an official response to the testimonies and of an authoritative perspective on changes in prison policy during the years under review.

■ THE HEARING

The link between prisons and apartheid

- 22 From the early 1960s, with the introduction of detention without trial under the various versions of the General Law Amendment Act, prisons became an essential part of the apartheid system of control. The incarceration of political opponents became "a significant permanent feature" and by 1976, legislated power effectively meant the "criminalisation of most forms of opposition to the apartheid state". Prisons, therefore, became a "major weapon against political dissent" and the threat of being imprisoned became an essential part of apartheid's 'armoury'⁶.

⁶ See Buntman, Dr Fran (1997), 'Between Nuremberg and Amnesia: Prisons and Contemporary Memories of Apartheid', unpublished paper presented at African Study Association meeting, Columbus Ohio.

- 23 In another sense, the realities of life in prison for both common law and political inmates became a mirror of the society outside. As an exiled writer in London, Allen Cook, wrote in 1974:

The appalling fact of apartheid is that a society has been created whereby, for the blacks, the conditions of ordinary life are comparable to those of imprisonment, in terms of conditions normally held to constitute imprisonment: forcible separation from families, controlled living in security institutions behind barbed wire, and supervision by persons with wide powers to command and punish.⁷

- 24 The irony is that, towards the end of the period under review, having been in prison for political reasons became a badge of distinction, most obviously symbolised in the figure of Nelson Mandela. This might explain why so few former political prisoners, who include a large number of current government and political leaders, approached the Commission to give testimony about their experiences. Indeed, when it was suggested to some of these leaders that they should testify at the prisons hearing, they declined — either because they regarded their sufferings in prison as a necessary contribution to the struggle against apartheid or because they felt that their experiences were insignificant when compared to those of others.

Racial segregation

- 25 For most of the period covered by the Commission's mandate, racial segregation was applied at all levels in all prisons. This was evident in the physical separation between black prisoners on Robben Island and white prisoners in Pretoria and in such day-to-day matters as clothing, food and the apportioning of privileges.
- 26 This practice was especially detrimental to black prisoners, as related by Mr Andrew Masondo, who described conditions on Robben Island:

The mere fact that you were black meant your clothing was different, as if the weather treated you differently. Your food was different, as if you became hungry in a different way. The food was a problem because you were with comrades – in fact, I think it was even more painful for people like Kathy [Kathrada] and Laloo [Chiba] who could actually eat bread. Even the amount of sugar in your porridge was different: the blacks got a teaspoon, the others two.

⁷ South Africa: the Imprisoned Society, IDAF, 1974.

Special treatment of political prisoners

- 27 The classification system, which determined 'privileges', was deliberately used as a weapon against political prisoners. Thus, Andrew Masondo reported:

If you were arrested for murder or any other crime and it was your first offence, you'd be put into B group and that gave you a lot of privileges. But if you were a political prisoner, you would be put into D group. Being in D group meant at the time you could only get one letter in six months, one visit of thirty minutes in six months ... I never reached A group.

- 28 Similarly, political prisoners were, until the late 1980s, denied any amnesty or remission of sentence. Indeed, prison authorities claimed that there were no political prisoners in South Africa, which was clearly untrue. However, improvements came slowly, mainly in the late 1980s and usually after campaigns inside and outside the prisons, such as those following the Strachan case (see below).

- 29 Former prisoners at the hearing paid particular tribute to the contributions of Helen Suzman (MP) and the regular visits to political prisoners by the International Committee of the Red Cross. These visits were, however, restricted to sentenced prisoners whose conditions did, in general, begin to improve in later years, while those of detainees probably worsened between 1960 and 1990.

- 30 Political prisoners were consistently treated with unusual cruelty, as when Bram Fischer's son died. Fischer's daughter, Ilse Wilson, described what happened:

The most difficult part of Paul's death was that his brother Gustav came from Bloemfontein to tell Bram that Paul had died, and Bram was called late one afternoon for this unexpected visit, and he was told about it. He was not allowed into a private room to talk with his brother. They had to talk to each other through the partitions, with the warders on either side of them. By the time the visit was over, it was lock-up time and Bram went back on his own to his cell and was locked up on his own. For fourteen hours after the news of his son's death, he was left on his own.

Prisons and health

- 31 Several of the witnesses told the hearing of difficulties in receiving proper medical treatment while in prison. Mr Henry Makgothi, for instance, described the difficulties

he encountered in receiving treatment for tuberculosis on Robben Island:

It was very difficult to gain access to the hospital. The doctor didn't come often enough, and even then there were so many obstacles they placed in your way before you could get to the hospital; but eventually I did manage to get to the doctor and they sent me to Cape Town for treatment. I was not sent to hospital because I was a dangerous prisoner.

- 32 The overall picture gained at the hearing was that the role played by district surgeons was controversial and questionable.⁸ Medical services often failed prisoners badly. Sometimes, the consequences were very serious, as with Bram Fischer, a leading Afrikaans advocate, who served a life sentence in Pretoria. His two daughters reported how, prior to the discovery of the cancer which finally killed him, their father was treated with woeful negligence and, indeed, considerable malice by the authorities at Pretoria Local:

Bram had a prostate operation in July 1974. About two months after that he saw a Dr Brand because he had an acute pain in the hip. He was not examined but given an analgesic and some physiotherapy. After two weeks of no relief, the physiotherapist referred him back to the doctor and suggested X-rays or an orthopaedic opinion. Nothing was done.

The pain was so severe that Bram needed crutches to walk. The prison didn't supply him with crutches, so the other prisoners made a crutch for him out of a broom. Later he was provided with crutches, but he still wasn't sent for X-rays.

In October, a Dr Groenewald sent him for X-rays and, later in that month, Bram saw an orthopaedic surgeon who warned that the neck of the femur was very fragile and that a fall would be dangerous. On 6 November, Bram fell while trying to shower on his crutches. On 7 November, he asked to see a doctor, who didn't come. On 8 November, he again asked to see a doctor but the medical orderly said it was impossible to get a doctor. On 9 November, Bram was in great pain and the medical orderly provided some analgesics. On 12 November, Dr Brand said there was no fracture. Bram continued in tremendous pain.

Finally on 15 November, nine days after the fall, Bram again saw Dr Brand and an X-ray was at last done. The radiographer identified a fracture of the femur. On 16 November, Bram was seen by a specialist who confirmed the fracture and advised hospitalisation.

⁸ The chapter on *Institutional Hearing: the Health Sector* provides a description of the role and divided loyalties of district surgeons.

On 19 November, thirteen days after the fall and probable fracture and four days after the fracture was diagnosed, Bram was eventually admitted to the HF Verwoerd Hospital.

- 33 Evidence was also heard from Dr Judith van Heerden of the University of Cape Town, the author of a study on prisons and health. She said that her research led her very strongly to one conclusion about the provision of health care in prisons:

To provide proper care for all inmates in custody, a strong argument can be made for the complete separation of health care from custodial care. The Department of Health should take on responsibility for custodial health care. This will also do away with the confusion about the role of nurses. Their present custodial role undermines the trust and confidentiality which should exist between patient and nurse.

- 34 Dr Van Heerden also made the point that, "abuse and the seventy-three deaths of political detainees during the three decades of repression occurred mainly outside prisons, at police stations or at interrogation centres".

Women in prison

- 35 One of the most startling features of the hearing was the devastating description by women of their experiences as political prisoners. A number of witnesses told of their time as detainees and prisoners. Their conditions were different to those of men and were very severe. Ms Deborah Marakalala was pregnant when she was detained. She described what happened:

Whilst interrogating me, they changed from one policeman to the other, and I would have to answer questions standing. I was not allowed to sit down. At that time I was pregnant. As they could not get anything out of me during the interrogation, they said they would make me tell the truth, and they told me to take off my jacket. I did as I was told.

At that time they started assaulting me. I became lame from the waist downwards, as if I had pins and needles in my body, and I lost my balance and fell and messed myself.

- 36 She was then taken to prison where, after a few days, she asked to see a doctor, as she was “confused, sick and swollen”. No doctor came.

Then one day I felt weak. I lost strength and late that afternoon I started vomiting. I still asked to see a doctor, but I was told the doctor would not come. On the third day I collapsed. That was the time I was actually having a miscarriage, and I was taken to Johannesburg Hospital where they found that I did have a miscarriage.

- 37 Not only did she have a miscarriage but, for a year, she was not allowed to see her children.

- 38 Women were deliberately ‘diminished’; subjected not only to physical discomfort and torture but also to extreme mental torment. The most effective method was to use family matters as a means of applying pressure on women where they were most emotionally vulnerable. Ms Zahrah Narkedien described how, although physical torture could not break her, she could resist no longer when she was told that her nephew would be killed:

They tortured me for seven days, and the only thing that really made me break in the end was when they threatened to go back to my house where my sister was staying with me and kidnap my four-year-old nephew, Christopher, bring him to the thirteenth floor and drop him out of the window.

At that point I really felt at my weakest, because I felt I could risk my life and I could let my body just be handed over to these men to do what they liked, but I couldn't hand over someone else's body, so at that point I fully co-operated.

- 39 Narkedien’s testimony confirmed that of Ms Nobuhle Mohapi, at the first human rights violations hearing in East London. Mohapi said that, when she was detained, she was told that her child had died and that she would be allowed to attend his funeral only if she signed a statement that had been prepared for her. She refused to sign and was later released to discover that her child was not dead.
- 40 Although she tended to downplay the effects of her physical torture, Narkedien’s description of how she was treated by the security police gave the Commission important insight into the special treatment received by women.

They started to realise that I was enduring [their] abuse, so they took a plastic bag ... One person held both my hands down, and the other one put it on my head and then they sealed it so that I wouldn't be able to breathe and kept it on for at least two minutes, by which time the plastic was clinging to my eyelids, my nostrils, my mouth and my whole body was going into spasms because I really couldn't breathe. They'd do it to me for about three times, but I still wasn't prepared to surrender to them. I was willing to suffer it out.

And then they decided I had to do physical exercises. They always had a woman present when they were torturing me, and they asked her if she would like to leave because they were going to intensify the treatment.

All these days I was wearing the same clothing, just a dress, and I was also menstruating at that time, which I told them so I couldn't stand so long and I was bleeding a lot. They made me lie on the floor and do all kinds of physical exercises, lifting my body with my hands – what they call press-ups – then reducing the fingers until I had to pick myself up with just two fingers. While I was down they would kick me and tramp on me.

All this time it didn't really matter, but it was beginning to hurt physically. They did this for hours on end. Even Inspector de Beer, who was the investigating officer, even he came in and started hitting me with a clothes brush. Any physical pain didn't matter, because I just sort of transported myself out of there.

After a while, he kept intensifying the physical treatment, and he would use both his hands to strangle me and lift me right off the ground and then drop me, grab me by the hair and throw me down and pick me up.

After a good few hours — I think that's when they realised, after the seventh day, that they would have to use psychological treatment, because I was like a person who was physically there but spiritually and mentally I wasn't there. After he threatened me with my nephew, I said I would do anything he wanted.

- 41 Narkedien also gave a chilling account of the physical conditions of the cells in which she was kept.

What really bothered me were the rats. I know there's this chauvinist thing where men would say women are just afraid of mice and rats, but these were not little mice. These were huge rats, the size of cats, that were in the

cells, in the passages all the time. I would sit and eat my food, and three of these rats would just sit and look at me. I'd be in the yard praying. The rats would just be around me, and I'd get up and chase them, but they'd come back in. I had to use my towels and clothes to block the access where they were coming in under the door, and the rats just used to rip all that and eventually come in.

One particular evening, one was crawling on me, and I didn't quite mind until it got to my neck [when] I screamed the whole prison down. The guards came running as they didn't know where this problem started. When they eventually came, they found me in the corner, and I was actually eating my T-shirt. That's how berserk I went.

Solitary confinement

42 Another remarkable feature of the hearing was the testimony describing the effects of solitary confinement and calling for its abolition. Solitary confinement was used by the former state for two reasons: to bring about the psychological breakdown of political detainees, and as a form of punishment and control of sentenced prisoners. The testimonies were consistent in highlighting such treatment as punitive, cruel and inhumane.

43 Ms Zahrah Narkedien described the effects of her isolation:

I had to go down and live in the basement in isolation for seven months. That was very, very painful. I don't even want to describe psychologically what I had to do to survive down there. I will write it one day, but I could never tell you. But it did teach me something, and that is that no human being can live alone for more than, I think, even one month ... because there's nothing you can do to survive by yourself every single day.

The basement was an entire wing of the prison ... I felt, as the months went by, that I was going deeper and deeper into the ground. Physically I wasn't, but psychologically I was ... I became so psychologically damaged that I used to feel that all these cells are like coffins, and there were all dead people in there ... It was as if I was alive and all these people were dead. I was so disturbed but I would never, never let the wardresses know ... But they did destroy me....

My suggestion is that no prisoner, regardless of their crimes, should ever be in isolation per se – not even this section 29 business for two weeks. I know it serves a purpose but, ultimately, when it's prolonged, I don't think anybody can handle it.

I've been out of prison now for more than seven or ten years, but I haven't recovered and I will never recover. I know I won't. I have tried to. The first two years after my release, I tried to be normal again and the more I struggled to be normal, the more disturbed I became. I had to accept that I was damaged. A part of my soul was eaten away as if by maggots, horrible as it sounds, and I will never get it back again.

- 44 Asked if she felt solitary confinement could be defined as 'severe ill treatment', Ms Jean Middleton said:

The prison authorities themselves know it's ill treatment, that's why they use it as a punishment. People found guilty of prison offences are kept in isolation. It is a punishment. I can't describe its effects on you very well, because you do go slightly crazy, and it's very difficult to describe your own craziness ... Colonel Fred van Niekerk of the Special Branch once told a court that prisoners started showing evidence of disorientation within three days.

- 45 Mr Murthie Naidoo had this to say:

After making a statement, I was taken back to my cell where I was kept in solitary for four months under the 180-day law. I must confess that solitary confinement is the worst kind of torture that can be inflicted on a human being. No amount of physical torture can equal that of solitary confinement. I had absolutely no contact with any of the other prisoners who were almost entirely common law prisoners, but I could continually hear the beating and sjambokking [whipping] of other prisoners.

- 46 Mr Harold Strachan described how he was permanently affected:

I got put into solitary confinement for eleven months straight. And that cell ... it was as big as four squares on the floor here, and I came out of that cell twenty minutes a day to exercise indoors, in total silence. For eleven months, I didn't speak to anybody ... one handles that sort of thing all right, you just contract your universe a bit, but I had a very serious reading disability, very similar to a stammer in speech, and I have it to this day. I get stuck when reading and

can't break past certain words. It is like a stammer in speech, and it is still with me. I don't know how that developed in solitary confinement, but it did.

Capital punishment

The primary purpose of this submission is to ensure that the Truth and Reconciliation Commission places on record the fact that the use of the death penalty in South Africa constituted a gross human rights violation ... It would be academic to ask whether or not the death penalty was associated with 'conflicts of the past'. It was but one of the methods used by those with power to oppress those without. 1 154 people were executed in South Africa in the ten-year period 1976-1985. The state apparatus that arrested, interrogated, tried, imprisoned and executed 1 154 people for capital crimes in South Africa was the same apparatus that maintained, often by brutal force, the apartheid system.⁹

- 47 As the department that implemented the death penalty, the prisons department formed an integral part of the apartheid system. Testimony at the hearing emphasised that capital punishment was used as an important weapon against opponents of apartheid. More particularly, the audience at the second day of the hearing listened in horror as witnesses told of experiences on death row, providing what one commentator described as the "most damning indictment of capital punishment ever heard in this country".
- 48 Paula McBride told of her perceptions as a daily visitor to death row between 1987 and 1990. She came to give evidence, she said, because, "In my mind, the death penalty is a gross human rights violation and should be recorded [as such] at the Truth and Reconciliation Commission." Capital punishment, she said, "brutalises not only those who are sentenced, but those who sentence them – the judges – and it brutalises our whole country, because if we allow it to happen, we participate in it."
- 49 She described in graphic detail what happened when someone was hanged, and the effect it had on families. She cited, for instance, the 'Christmas rush' of 1988, when twenty-eight people were hanged in one week. She pointed out that 95 per cent of the people who were hanged were black and that 100 per cent of these had been sentenced by white males. Over the period of the Commission's mandate, over 2 500 people were hanged in South Africa. In South Africa, as in America, the death sentence was far more likely to be imposed if the victim of the crime was white.

⁹ Submission by Paula McBride.

50 Paula McBride describes conditions on Death Row at Pretoria Maximum Security Prison:

The Maximum Security Prison in Pretoria was a prison designed for death. Its sole purpose as an institution was to imprison persons condemned to death, clothe them, feed them and keep them whole until they were killed. However, from the first time a prisoner arrived at Death Row, elaborate mechanisms were put in place to ensure that he or she would not kill themselves. This was a job reserved for the state and no one would take it away.

The lights were on 24 hours a day; prisoners were watched from a grille above their heads, they wore no belts. After the suicide in 1987 of Frikkie Muller, who gouged his wrists with a shoe nail on the day before his execution, all the condemned wore soft shoes ...

No studying was allowed – and prisoners were often taunted with the fact of their impending death. What do you want to study for? Why are you exercising? What is the point of improving your body or mind when you are going to die?.

The routine was ghastly but familiar. The Sheriff would arrive at Pretoria Maximum Security Prison with a batch of notices in his hand ... The prison warders would walk down the silent corridors between the individual cells, and footsteps would stop outside.

Those that were, in [the opinion of the State President] no longer fit for this world were sent to the 'Pot' ... It was here, in the waiting cells, that the hourly count down began. It was also here that the traditional silence of Death Row was broken – with singing day and night. Singing mostly of traditional and religious hymns but sometimes of freedom songs where those to be hanged were guerrillas.

During the week that they waited to die, they were measured for the hangman: the thickness of their necks, their height and their weight are all measured to ensure that the length of the drop is calculated correctly.

On the night before the execution was to take place ... each of the condemned prisoners [would be given] a whole, deboned chicken to eat and R4 to buy something from the prison tuckshop ...

The bodies would be taken in the coffins ... to unmarked graves in one of the segregated graveyards around Pretoria ... No family members were allowed to accompany the coffins or to pray while the bodies were interred. At a later date, families were handed a grave number.

- 51 Asked to comment on whether the death penalty was a deterrent, McBride said it had never been proved that capital punishment would stop crime, nor had any of the approximately 250 death row prisoners interviewed ever said they felt it had deterred them. Her verdict on those calling for the reintroduction of the death penalty was clear:

People who put out the call "Hang them ... Bring back the death penalty" do not have any understanding of what it does, not just to the people who are hanged, but to our society. It is a brutal, barbarous, uncivilised, grotesque part of our society and South Africa should be the prouder that we have been one of the countries in the world to take it off our statute books.

- 52 Two witnesses gave harrowing testimony about the time they spent on death row. Mr Duma Khumalo and Ms Machabane Theresa Ramashamola were members of the 'Sharpsville Six'. They were sentenced to death for common purpose, but reprieved the day before they were to be executed. Both described in chilling detail how the experience affected them and their subsequent nightmares. Ramashamola's final statement was received in awkward silence by the hearing:

At the present moment, I don't want to live, as far as life is concerned, if they would have hanged me at that time, it would be much better. It would have been painful then, but that would be it.

- 53 The final witness in this section was Warrant Officer Steinberg, who served as a young warder on death row in Pretoria for more than two years prior to the imposition of the moratorium on hanging. One of the most telling aspects of his testimony was his evidence on the lack of special training given to warders on death row. He was never, he said, asked whether he had moral objections to hanging, nor was he given any advice on how to handle those about to be executed.
- 54 During the tea break after this testimony, a remarkable meeting took place at the entrance to the marquee. Two former death row prisoners shook hands and joked with the man who would, had they not been reprieved, have accompanied them to their execution. It was the kind of meeting that could only have happened at a hearing of the Commission.

Reporting on prisons

- 55 The Commission heard evidence from Harold Strachan, about whose experiences in prison the *Rand Daily Mail* managed to publish three articles in 1965 before he was banned and charged with perjury. The Strachan articles broke an almost fifteen-year silence about prison conditions and resulted in the beginning of wholesale reforms in the prison system. However, the prisons department manufactured a perjury charge against him and the newspaper. Numerous warders and prisoners were used to deny 'a fraction' of his descriptions, and he was again sent to prison.
- 56 Benjamin Pogrund, the journalist primarily involved in the Strachan articles, described the cases against Strachan and the *Rand Daily Mail* as a "series of frame-ups and concocted evidence and mass perjury". The "Nationalist newspapers and the SABC engendered an atmosphere of fear and threat in the public, so that very few people were willing to assist us with further information, let alone testify for us".
- 57 Pogrund pointed out that, following the court cases against Strachan and the newspaper, "a blanket of silence descended on the prisons for years to come". The consequence was a "totally absurd situation that information about jail conditions could only safely be published if the Prisons Department approved publication in advance".
- 58 The effect of the Strachan prosecutions rippled far beyond prisons. It effectively tied up the resources and energies of the *Rand Daily Mail* for more than four years while the case dragged on. Moreover, the success of the prosecutions sent a sharp warning to journalists to lay off prison stories. The onus was now on the defendant to prove that the published information was correct; in other words, defendants were deemed guilty until they could prove themselves innocent.
- 59 This affected not only stories on prisons, but was later extended to the army and police, placing an effective ban on any adverse reporting of the security forces. It created the climate in which the secret operations of Vlakplaas, for instance, could be initiated and carried out with little fear of exposure.
- 60 The use of the Prisons Act to restrict media coverage of conditions in prisons enabled the authorities to maintain a system of control that could not be monitored by outside society. This allowed abuse and injustice to continue.

The 'camps'

- 61 Two witnesses gave evidence about the African National Congress (ANC) detention camps in Angola - particularly Quatro, apparently named after the Johannesburg Fort ('Number Four') itself. Both testimonies told of severe ill treatment and abuse in the camp, and of continued difficulty in getting satisfactory information from the ANC about what happened there.
- 62 Mr Diliza Mthembu, himself a one-time ANC representative in Benguela and now a sergeant in the South African National Defence Force (SANDF), described his experiences in the "hell" of Quatro. He spoke of his current feelings of being "helpless and hopeless" and of having received no satisfaction from his appearances at previous commissions of enquiry into the camps. He reserved his censure for the ANC leadership:

For the young guys who were working in Quatro, I don't have any grudge, because maybe myself, if I was in their boots, I would do the same because they were very young. You know, sometimes using very, very young people to run an establishment of such magnitude is very dangerous.

- 63 Mr Joe Seremane, whose younger brother was executed in Quatro, gave remarkably moving testimony about his feelings of betrayal and his inability to reach 'closure' because of being unable to obtain clarity about the reasons for his brother's death.

I have seen what it means to be tortured. But when I think of [my brother] Chief Timothy and compare the way he died to my suffering, my suffering is nothing, and I have decided not to say anything about that. It is just pointless. It is useless. The system [(meaning the previous government)] in a way resembled accountability because when they were finished with me, they threw me on the lap of my people and said "There is your rubbish. We are through with it." And my people (of the ANC) can't come and dump those bones (of my brother) and say "We are through with those bones".

I can ask for my court records and find them and go through the trial today, from the system; but my movement can't offer me a piece of paper to show me how they conducted the trial ... We still want the truth. It is going to be hard to forgive when you don't know exactly what has happened.

■ COMMON LAW PRISONERS

- 64 The hearing heard the evidence of Mr Golden Miles Bhudu of SAPOHR. Bhudu gave details of the torture and deaths of common law prisoners in prisons throughout the country. He questioned whether the experiences of these prisoners, in the light of the “perpetuation of the injustices of the past”, should fall outside the mandate of the Commission. There was a difference of opinion on the panel about this, but consensus on the need to emphasise that continuing vigilance and care in running all prisons is necessary at all levels.
- 65 The evidence presented by former inmates of the prisons, whether sentenced or in detention, left a clear picture of the role of prisons under apartheid. Imprisonment (and the threat of imprisonment) became an important link in the chain of control, from security forces to police to prison. The Prisons Department was a willing partner in the state’s efforts to ‘neutralise’ and ‘eliminate’ opposition. The prison gallows became the final instrument of official disapproval.

■ FINDINGS ARISING OUT OF PRISONS HEARINGS

The Commission finds that:

- 66 The Department of Prisons co-operated with the former state in the use of imprisonment or the threat of imprisonment in the chain of control and oppression of opponents of apartheid.
- 67 It was the policy of the Department of Prisons to use cruel, degrading and inhuman forms of punishment on prisoners including caning, ‘spare’ diet, leg irons and solitary confinement.
- 68 The facilities of the Department of Prisons were regularly used by the South African Police for purposes of interrogation and torture.
- 69 The Department of Prisons created the ‘farm prison’ system as a basis for providing cheap labour for white farmers. Africans arrested for pass law offences were frequently used to provide this form of labour. Although the Commission was not presented with evidence of this, it has been recorded elsewhere that the system resulted in numerous instances of gross human rights violations, some of which resulted in death.

- 70 The Department of Prisons provided inferior food, clothing, living conditions and medical care for black prisoners.
- 71 Prison staff frequently ignored the particular needs of women in respect to, for example, menstruation, pregnancy, childbirth and parenting. These needs were also often exploited as a way of subjecting women to intimidation and harassment.
- 72 The Department of Prisons co-operated with other structures of the state in the use of capital punishment to eliminate the opponents of apartheid, as well as those found to be guilty of other offences that the state deemed to be worthy of the death sentence.
- 73 The overt paramilitary basis upon which the Department of Prisons was organised, including a system of ranks closely akin to the military and police, contributed to the impression that it was an extension of the security forces. This detracted from its fundamental duty to reform and rehabilitate, as opposed to merely punishing, offenders.

■ APPENDIX: DEATHS IN DETENTION¹⁰

DATE	NAME	PLACE	ATTRIBUTED CAUSE
1.9.63	Bellington Mampe	Worcester	Undisclosed
5.9.63	'Looksmart' Ngudle	Pretoria	'Suicide by hanging'
24.1.64	James Tyitya	Port Elizabeth	'Suicide by hanging'
9.9.64	Suliman Saloojee	Johannesburg	'Fell out of window'
7.5.65	Nengeni Gaga	Transkei	'Natural causes'
8.5.65	Pongolosa Hoye	Transkei	'Suicide by hanging'
9.10.66	James Hamakwayo	Pretoria	'Suicide by hanging'
9.10.66	Hangula Shonyeka	Pretoria	'Suicide'
19.11.66	Leong Yun Pin	Pretoria	'Suicide by hanging'
30.11.66	Ah Yan	Silverton	'Suicide by hanging'
9.9.67	Alpheus Maliba	Namibia/N. Transvaal	'Suicide by hanging'
11.9.68	Jundea B Tubakwe	Pretoria	'Suicide by hanging'
5.2.69	Nichodimus Kgoathe	Silverton	'Natural causes'
28.2.69	Solomon Modipane	Silverton	'Natural causes'
10.3.69	James Lenkoe	Pretoria	'Suicide by hanging'
1.6.69	Caleb Mayekiso	Port Elizabeth	'Natural causes'
16.6.69	Michael Shivute	Namibia	'Suicide'
8.9.69	Jacob Monakgotla	Pretoria	'Natural causes'
27.9.69	Imam Abdullah Haron	Cape Town	'Slipped down stairs'; multiple injuries
22.1.69	Mthayeni Cuthsela	Transkei	'Natural causes'
27.10.71	Ahmed Timol	Johannesburg	'Suicide by jumping out of window'
19.3.76	Joseph Mdluli	Durban	'Force to the neck'
25.6.76	William Tshwane	Modderbee	'Shot while trying to escape'
15.7.76	Mapetla Mohape	East London	'Suicide by hanging'
2.9.76	Luke Mazwembe	Cape Town	'Suicide by hanging'
25.9.76	Dumisani Mbatha	Modderbee	'Natural causes'
28.9.76	Fenuel Mogatusi	Johannesburg	'Natural causes'
5.10.76	Jacob Mashabane	Johannesburg	'Suicide by hanging'
9.10.76	Edward Mzolo	Johannesburg	Cause undisclosed
18.11.76	Ernest Mamasile	Transkei	'Suicide by hanging'
25.11.76	Thabo Mosala	Transkei	'Natural causes'
11.12.76	Wellington Tshazibane	Johannesburg	'Suicide by hanging'
15.12.76	George Botha	Port Elizabeth	'Suicide by jumping down stairwell'
9.1.77	Nabaoth Ntshuntsha	Leslie	'Suicide by hanging'
9.1.77	Lawrence Ndzanga	Johannesburg	'Natural causes'
20.1.77	Elmon Malele	Johannesburg	'Natural causes'

¹⁰ This list includes such names as are known to the Commission. See also Hilda Bernstein, *No 46 - Steve Biko*, IDAF, London, 1978; Human Rights Commission, *Deaths in Detention: Fact Paper FP7*, Johannesburg, August 1990.

15.2.77	Twasifeni Joyi	Transkei	Undisclosed
15.2.77	Mathews Mabelane	Johannesburg	'Fell out of window'
22.2.77	Samuel Malinga	Pietermaritzburg	'Natural causes'
26.3.77	Aaron Khoza	Pietermaritzburg	'Suicide by hanging'
7.7.77	Phakamila Mabija	Kimberley	'Fell out of window'
2.8.77	Elijah Loza	Cape Town	'Natural causes'
3.8.77	Hoosen Haffejee	Durban	'Suicide by hanging'
15.8.77	Bayempini Mbizi	Durban	'Suicide by hanging'
12.9.77	Stephen Bantu Biko	Port Elizabeth	Head injuries
7.11.77	Sipho Bonaventura Malaza	Krugersdorp	'Suicide by hanging'
10.7.78	Lungile Tabalaza	Port Elizabeth	'Suicide by jumping out of window'
10.9.80	Saul Ndzumo	Transkei	'Natural causes'
17.9.81	Manana Mgqweto	Transkei	Unknown
12.11.81	Tshifiwa Muofhe	Venda	Assault by police
5.2.82	Neil Aggett	Johannesburg	'Suicide by hanging'
8.8.82	Ernest Dipale	–	'Suicide by hanging'
8.3.83	Simon Mndawe	Nelspruit	'Suicide by hanging'
5.7.83	Paris Malatji	Johannesburg	Shot in the head
20.1.84	Samuel Tshikudo	Venda	'Natural causes'
7.6.84	Mxolisi Sipele	Transkei	Unknown
25.8.84	Ephraim Mthethwa	Durban	'Suicide by hanging'
6.5.85	Andries Raditsela	Johannesburg	Head injury
24.9.85	Batandwa Nondo	Transkei	Shot by police
5.4.86	Makompe Kutumela	Lebowa	Police assault
11.4.86	Peter Nchabaleng	Lebowa	Police assault
22.10.86	Xoluso Johannes Jacobs	Upington	'Suicide by hanging'
26.3.87	Benedict Mashoke	Burgersfort	'Suicide by hanging'
24.7.87	Eric Mntonga	East London/Ciskei	Police assault
29.7.87	Nobandla Elda Bani	Port Elizabeth	'Natural causes'
12.1.88	Sithembele Zokwe	Transkei	Shot by police
26.8.88	Alfred Makaleng	Johannesburg	'Natural causes'
30.1.90	Clayton Sizwe Sithole	Johannesburg	'Suicide by hanging'
26.3.90	Lucas Tlhotlhomisang	Klerksdorp	'Natural causes'
1.6.90	Donald Thabela Madisha	Potgietersrus	'Suicide by hanging'

Note: Only deaths in detention under security legislation are recorded on this list. Hilda Bernstein¹¹ notes that, in February 1977, the Minister of Police stated in Parliament that 130 people had died in police custody during 1976. Of these, thirteen were political detainees held in terms of security legislation.

¹¹ Bernstein (1978) page 150.

Special Hearing: Compulsory Military Service (Conscription)

■ PURPOSE OF THE HEARING

- 1 The broad purpose of the special hearing on compulsory military service (also known as the 'national service system' or 'conscription')¹ was expressed by Archbishop Tutu as follows:

The Commission is required by law to investigate all aspects of the conflicts of the past which gave rise to gross violations of human rights and to consider the perspectives and motives of the various participants within that conflict.

We know that there have been different points of view about the sensitive issue of conscription and strong views expressed for and against the old SADF [South African Defence Force]. Some held very firmly to the view that South Africa was facing a total onslaught from the Communist empire and its surrogates, and believed that they were constrained to defend South Africa against what they perceived as an atheistic, unchristian foe. Others believed, equally vehemently, that the enemy was not out there; that the border was here in our midst, that certain things happened in waging wars that were thought to be totally necessary - things that must make us all hang our heads in shame.

This issue, like so many in our apartheid past, divided our nation. We want to know as much as possible about the truth from all perspectives so that we, as a Commission, can suggest ways in which a divided and traumatised nation may be healed and make recommendations on how to ensure that the mistakes of the past (made on all sides) are never repeated.

¹ See Appendix 3 for a short historical overview.

- 2 More specifically, the objective of the special hearing was to:
 - a provide an opportunity for those who suffered, and continue to suffer from their experiences as conscripts, to share their pain and reflect on their experiences;
 - b explore the range of experiences of those affected by conscription. Included amongst these were those who opposed conscription and those who believed they were fulfilling their duty – those who fought on the border, servicemen who participated in township policing, those who were part of the citizens’ force and those who served as conscripts in the South African Police (SAP). It included those who went into exile to avoid conscription, those who opposed it at home, and the experiences of families who suffered as the result of the traumatising of their husbands, sons, or friends;
 - c raise public awareness about the reality and effects of post-traumatic stress disorder;
 - d develop recommendations on rehabilitation and reconciliation arising out of these experiences.
- 3 In a press statement calling for submissions from ex-conscripts in the South African Defence Force (SADF), the Commission emphasised that the hearing was “neither an attempt to look for perpetrators, nor a process that will lead to the awarding of victim status”, as defined by the Act governing the Commission.

■ PREPARATION

- 4 The special hearing on conscription was the subject of intense debates within the Commission and the product of sensitive and careful planning that involved consultation with various groups, both inside and outside of government. For example, in addition to the general call for submissions through the media, the Commission exchanged correspondence with the South African National Defence Force (SANDF) in an attempt to involve people from within the former defence force.² The programme of the day was also designed in such a way as to reflect a diversity of views, beginning with a broad overview of the social and political context of compulsory military service in order to provide a background to individual testimonies. The hearing closed with an inclusive focus on the way forward.

² In a letter from Brigadier AC Slabbert of the SANDF nodal (liaison) point to the Research Department of the Commission on 11 June 1997, it is stated that “the Surgeon General of the SANDF has undertaken to pass the press statement to all Curamus members”.

- 5 Yet, despite attempts to cater for the widest possible divergence of views, most individual testimonies submitted to the Commission were critical of conscription and the SADF. Because of this, the Commission was accused of bias.³

■ THE CONTEXT

Social and political context

- 6 Drawing on a number of extensive studies of the opinions of white students during the 1980s, Mr Jannie Gagiano of the Department of Political Science, University of Stellenbosch, painted a statistical picture of what he called the “closed socialisation environment” and “the mindset of the typical white conscript”.⁴ He noted that, when the last survey was done in June 1989, the United Democratic Front (UDF) and the African National Congress (ANC) had less than 5 per cent support in white student ranks. Amongst Afrikaans-speaking students, some 25 per cent supported right wing parties, 60 per cent supported the National Party (NP) and 15 per cent supported the Democratic Party (DP). Amongst English speaking students, the same parties received, respectively, around 1 per cent, 18 per cent and 70 per cent of support.
- 7 The high level of ‘encapsulation’, of living in ‘a sort of cocoon’, is illustrated by figures which showed that less than 13 per cent of Afrikaans students read any English newspapers and less than 10 per cent of English speakers read anything printed in Afrikaans. An even smaller percentage, in either group, read newspapers that were more sympathetic to the liberation movements. The highest reported frequency of any form of political discussion or contact with black students was 8 per cent.
- 8 The 1989 survey also showed a 60 per cent level of support for what the state and its central institutions stood for and wanted to preserve at that time (about 75 per cent among Afrikaans-speaking students and 52 per cent among English-speaking students). Sixty per cent of students who said they were members of the opposition DP expressed support for repressive action taken by the state against the protest initiatives of the ANC or the UDF. This figure rose to the high eighties amongst Afrikaans-speaking white students.

3 For example, former defence force chief, General Constand Viljoen, turned down an invitation to attend the hearing, saying his presence would only give legitimacy to a “one-sided programme which did not analyse the past honestly”. In the SANDF submission to the Commission, it is also stated that “no serving or retired members of the SADF or SANDF (with the exception of General Viljoen) were invited to attend or provide information for the hearing. The Commission thus only heard one side of the subject.” This statement is factually incorrect: see correspondence referred to in footnote 2; the list of urgent questions submitted to the nodal point on 15 July 1995, and the fact that three participants in the hearing were either current serving members of the SANDF (Lieutenant Colonel Botha) or retired members of the SADF (the Reverend Neels du Plooy and Lieutenant Craig Botha).

4 This submission was based on a 1990 IDASA research report: ‘Worlds of Difference - The Political Attitudes of White Students in South Africa’.

- 9 As far as attitudes to conscription and the refusal to do military service were concerned, around 85 per cent of Afrikaner male students and 55 per cent of English-speaking students said that they would never refuse to do military service as a form of political protest. Mr Gagiano also referred to high figures that show that, in 1989, a large majority of white students in South Africa still viewed Communism as a very serious threat.
- 10 Professor Annette Seegers of the Department of Political Science, University of Cape Town, drew the attention of the Commission to a number of questions which, in her view, still needed to be explored if the “socially pervasive influence” of the national service system in the white community was to be fully understood. She distinguished between:
- a factors that influenced people before they entered national service, such as the attitudes of parents and the roles of employers and high schools (specifically the imitation of military service through the cadet system);
 - b experiences during national service, and
 - c experiences after national service, such as (in her view) cynicism about public institutions and greater solidarity between Afrikaans and English-speaking people.
- 11 She emphasised that white men remained involved in the military for a large part of their lives, a point illustrated by this quotation from an earlier analysis⁵:

The relationship between part-time and full-time forces can best be understood in terms of the typical Defence Force career of a white male. All white men must register for military service at sixteen, while still at school. They are then liable for service in the full-time force. Those who do not make a career in the permanent force are required either before or after tertiary education to render two years of national service in one of the five arms of the Defence Force. After this they are placed in the part-time citizen force for twelve years, during which time they must serve up to 720 days in annual thirty-, sixty-, or ninety-day ‘camps’. Then they are placed in the active citizen force reserve for five years and may be required to serve twelve days a year in a local commando until the age of fifty-five. Finally, they are placed on the national reserve until they are sixty-five.

⁵ Mark Phillips, ‘The nuts and bolts of military power: the structure of the SADF’, *War and Society - The militarisation of South Africa*, Jacklyn Cock & Laurie Nathan (editors), (Cape Town & Johannesburg: David Philip), 1989.

- 12 Professor Seegers also drew attention to the very large numbers of white men who were involved in the national service system. The average number of people who reported for the annual intake of conscripts was approximately 22 000. From 1960 until it was scrapped, approximately 428 774 people reported for compulsory military service.⁶ (See appendix 2 for details).
- 13 A psychologist whose clients include ex-SADF conscripts echoed these views. In a written submission to the Commission, Ms Trudy de Ridder of the Trauma Centre for the Victims of Violence and Torture, Cape Town, reported that:

Most ex-conscripts report that they, their peers and their community saw service in the SADF as a natural part of growing up and 'becoming a man'... The national education system consistently presented military training as a given part of the rites of passage of white men and the moral duty of anyone concerned with defending order and morality (Christianity) against the forces of evil and chaos (Soviet-inspired Communism)...

My recent experience with ex-conscripts has been characterised by their insistence that they could not have had the tools or information to challenge this view - especially at the age of seventeen or eighteen. Most report that, once in the SADF, resistance to the fact of conscription, the chain of command or the politico-military objectives was unthinkable. In fact, most still associate their military experiences with a sense of pride - in their capacity for physical and psychological endurance...

- 14 At the Commission's special hearing on children and youth in Johannesburg on 12 June 1997, this perspective was clearly expressed by Mr Christo Uys, a council member of a prominent Afrikaner youth organisation, the *Junior Rapportryers Beweging* (JRB):

We were born in the struggle. The war on the border was in the process and within South Africa there was a freedom struggle. Today it is seen as a very just struggle, but the effect thereof wasn't always as just. And this was the struggle that we fought in the police and in the army. We did our service and those of us who weren't in the police or did our national service; we prepared ourselves at school and university to play an active role in the economy of South Africa.

⁶ 'Additional submission with regard to the former SADF,' compiled by the SADF Nodal Point in co-operation with former chiefs and members of the SADF.

Sometimes it is often overlooked and forgotten that we also played a role in the struggle against Communism; today it is seen to be ludicrous but we believed that we did play a positive role there.

And in essence, our struggle was against anarchy. Today we listened how anarchy was prevalent in black communities - how it affected people's lives. There were references made to kangaroo courts, necklacing. This also affected us.

As a national serviceman in the army, I believed and I was sure that I contributed to keep people's lives safe. We also heard a lot of different atrocities that took place and the moment that an Afrikaner says it, it is not believed. But you know that, while I was in the army, I didn't talk to people or receive commands or instructions that led to the violation of human rights.

The fact that we today have the infrastructure in this country that is the best in Africa, the fact that we have the potential to grow economically, that to me is proof that we succeeded in making a great contribution towards a peaceful transition in South Africa.

You know democracy is a wonderful thing, but you cannot eat it and it doesn't keep you warm in winter. If in South Africa there was a [very hasty] transfer to a new democracy in South Africa, we could also have awoken today in Bosnia...

As young Afrikaners, we are proud of our cultural heritage and we are proud of the role that we play in this country. And we believe that our struggle was imbedded in core values that we learnt in our families and our struggle will come to the fore every time these values are endangered.

- 15 Individual testimony at the hearing on conscription also provided a window on the ways in which white society as a whole either supported or failed to take issue with the national service system. Professor Johan Hattingh, who also gave testimony as an ex-captain in the Citizen Force, read from a letter his mother wrote to him when she heard that he was preparing a submission to the Commission:

Johan, a perspective relating to the Defence Force of which the Truth Commission will never hear is, [first], the role which parents of soldiers played. Despite parents' serious concerns and anger regarding what was happening to their sons, they had to remain positive to be able to assist their sons, come what may.

Secondly, the women in South Africa (white women) became active and started rendering services - these were the Defence Force women, the Southern Cross Fund and the church women. We collected money to furnish in a cosy way coffee bars where soldiers could relax; we bought furniture, etc. There was also money collected for rooms of prayer, for various bits and pieces of furniture and games, etc. We corresponded with soldiers and we assisted families of soldiers locally. We sent parcels with biscuits to all the army bases [she adds with some humour that she later heard that there was such a flood of biscuits that the soldiers began pelting each other with them!].

Religious context: a perspective on the role of the church and the chaplaincy

- 16 The Reverend Neels du Plooy was a chaplain in the SADF between 1977 and 1990. From 1979, he was public relations officer to the Chaplain General and Senior Staff Officer: Publications. His submission to the Commission prompted the following questions:
- a Why did the overwhelming majority of healthy, young and motivated South African white males of good standing, Afrikaans and English-speaking, unconditionally do national service - and more even than that, look forward to it?
 - b Why did parents accept national service as a necessity and a general way of life?
 - c Why did young people having difficulties at school suddenly see national service as a very good cause and a very good reason to quit school the moment they became eighteen?
 - d Why did parents feel obliged to inspire young men with problems at home or at school to join national service in the hope that disciplined training, etc. would do them good?
- 17 Drawing on his extensive personal experience, the Reverend Du Plooy focused on the role of the Church and, in particular, the chaplaincy in "bringing about this positive attitude".⁷ While acknowledging that chaplains "did have the freedom to preach the gospel according to their convictions," and that they played a "vital role ... especially in conveying death messages to service men as well as parents", he said that his main concern was the "unholy marriage between the church and the state":

- 18 In order to understand the role of the military chaplain and the national servicemen chaplains in the SADF, one needs to keep in mind that, especially as far as the mainstream Afrikaans churches were concerned, the church at national synod level co-operated fully with the SADF on issues of military and national service. The church accepted the advice of the leadership of the NP government and Defence Council as far as defence matters were concerned.

This total involvement, and this [is what makes one] 'heartsore', was strengthened by the infamous concept of the total onslaught. Through the idea of the total onslaught, the church immediately became an ally in the war. The total onslaught concept assumed that only 20 per cent of the onslaught was of a military nature and the other 80 per cent directed against the economical and spiritual welfare of the people. Therefore the chaplaincy and the church had to be involved in winning the hearts and the minds of the people.

The Church's main task was to strengthen the spiritual defensibility of its members. The Church was now totally convinced [of] the fact that we were fighting the war ... we were fighting a just war. Almost every synod of the Dutch Reformed Church during this time supported the military effort in their prayers and by way of resolutions of thanks. They acknowledged the fact that the SADF helped to constitute a safer living environment for the peoples of South Africa and serving church members in the SADF..

Chaplains - in the citizen force, commandos and permanent force - had a special task to keep civilian congregations informed. They delivered sermons and addresses to these congregations to console parents as to the special care their sons [were receiving] during national service. Special efforts were made to call on the girlfriends of national servicemen to be positive about the war, because it was for their safety and future that the boyfriend was doing military service. Chaplains even gave guidelines to girlfriends on how they should write their letters to the men on the border or in the townships. For example, [they were told] "never write or talk about problems at home..."

- 19 Another striking illustration of this 'unholy marriage' between church and state was the issue to each soldier of a special edition of the New Testament and Psalms. Bound into the front of this special edition was a message from Mr PW Botha, first as Minister of Defence and later as State President, which read: "This Bible is the most important part of your military equipment..." The Reverend Du Plooy

⁷ See also *Report on Institutional Hearing: Faith Community*.

noted "that we eventually in 1989 succeeded in having the message of PW Botha inserted as a loose leaflet and not bound in anymore."

The Committee on South African War Resistance and the End Conscription Campaign

20 Mr Roger Field provided a brief input on the Committee on South African War Resistance (COSAW), an organisation of exiled conscientious objectors, formed in the aftermath of South Africa's invasion of Angola in 1975 and the Soweto uprising the following year. Its aim was to raise international awareness about the role of the SADF and to provide support to objectors in exile. Mr Field, who worked for COSAW between May 1985 and December 1989, emphasised that:

exile was the most important decision and, I think, often the most traumatic experience of [these resisters'] lives and its long-term effects should not be underestimated.

21 He also presented the Commission with a book "which contains the distillation of analyses by COSAW and resisters of the SADF and its occupation of Namibia, its war against the frontline states and its war against the people of South Africa."⁸

22 Dr Laurie Nathan was a founding member of the End Conscription Campaign (ECC) in 1983, ECC national organiser in 1985 and 1986, and is currently director of the Centre for Conflict Resolution at the University of Cape Town. He made a submission on the background to and objectives of the ECC. The ECC Declaration read as follows:

The Declaration is headed towards a just peace in our land, a Declaration to end conscription. We live in an unjust society where basic human rights are denied to the majority of the people. We live in an unequal society where the land and wealth are owned by the minority. We live in a society in a state of civil war, where brother is called on to fight brother. We call for an end to conscription. Young men are conscripted to maintain the illegal occupation of Namibia and to wage unjust war against foreign countries. Young men are conscripted to assist in the implementation and defence of apartheid policies. Young men who refuse to serve are faced with the choice of a life of exile or a possible six years in prison. We call for an end to conscription. We believe that the financial costs of the war increase the poverty of our country and that money should be used rather in the interests of peace. We believe that the

⁸ See Cathra, G. et al, 1994, War and Resistance, Macmillan.

extension of conscription to Coloured and Indian youth will increase conflict and further divide our country. We believe that it is the moral right of South Africans to exercise freedom of conscience and to choose not to serve in the SADF. We call for an end to conscription. We call for a just peace in our land.

- 23 Dr Nathan described the ECC as a broad, dynamic and creative coalition.

We had within our ranks English and Afrikaans-speaking people; we had school pupils, university students and parents. Some of us regarded ourselves as liberals; others as radicals, Marxists, pacifists, Christians, humanists. We had rock musicians, poets, artists ... All of these different sectors were able, through the ECC, to campaign against conscription in a way that they felt comfortable [with].

- 24 He noted that, because of the significance of the ECC's objectives and the high profile nature of its campaigns, its efforts were met with extensive state repression.

We were subjected to merciless vilification, the thrust of which was that we were traitors, cowards, 'mommy's boys' (as Magnus Malan once put it); that we were in bed with Communists and that we were part of the revolutionary onslaught against South Africa.

- 25 In 1988, following a successful court action against the defence force and a stand made by 143 conscripts who collectively announced their refusal to serve, the ECC was formally banned and became operative again only after the unbanning of the ANC and other political organisations.

■ INDIVIDUAL EXPERIENCES

- 26 As is the case with other individual testimonies before the Commission, it is impossible to capture the complexity and richness of the various oral and written individual submissions on compulsory military service. This section provides only an illustration of the wide divergence of mainly negative experiences brought to the attention of the Commission.

Conscientious objectors

- 27 In his testimony to the Commission, Dr Ivan Toms made a useful distinction between what he described as 'two waves' of conscientious objectors. The 'first

wave' began in the mid-1970s, when objections to conscription and the SADF were based primarily on religious grounds. The 'second wave' of objectors was linked to the ECC in the 1980s, and its objections were more explicitly political. The Commission heard testimonies from Mr Peter Moll and Mr Richard Steele, who represented the first wave, and from Dr Ivan Toms and Dr Laurie Nathan, who formed part of the second wave. The following extracts illustrate these points of view:

28 Mr Peter Moll said:

I became a conscientious objector in July 1976 at a conference held by the Students Christian Association on the University of Natal, Pietermaritzburg Campus. It was pointed out by Michael Cassidy of Africa Enterprise that the guerrillas of the ANC and SWAPO were young men like myself who wanted justice and an end to apartheid; thus the SADF was not fighting a foreign aggressor but was engaged in a civil war. The message struck home. I decided that it was no longer possible for me to go to military camps or to prepare for action in Namibia.

My motive was based upon general moral reasoning and Christian theological ethics. I was not a pacifist, although I had and still have great respect for pacifists. My objection was to the unjust nature of the war being conducted by the SADF inasmuch as it was in defence of white supremacy under the guise of protecting Christianity from Communism.

29 Dr Ivan Toms said:

I started this clinic in Crossroads from nothing. We built it with builder's rubble ... and some of my friends from the End Conscription Campaign started to help us. There, experientially, one saw what apartheid was all about. So my resistance to apartheid and to the army was not something from a book or from some intellectual view of life; it was experiential.

Perhaps just to raise one specific experience that led me to publicly refuse to serve in the SADF. In September 1983, we had a situation where many women and children came down to join their husbands in Crossroads. It was not a political thing; it was about being part of a family. And they were making these little structures of branches that they cut from the forests with black plastic over them. As we all know, September is the Cape Town winter so it was raining a lot. And for three weeks, day in and day out, the security

forces - the riot police - came in their Casspirs [armoured personnel carriers]. They'd bring camouflaged Casspirs and, in their dark green, light green camouflage uniforms, [would] rip down these structures, pull the plastics and branches to a spot and burn them in front of everybody..

Then one Friday, after three weeks of this, some of the women held on to the branches and to the riot police that constituted a riot. And they used teargas, rubber bullets (which, I don't know if you know, are six inches long and about an inch and a half in diameter of solid rubber) and police dogs to quell the riot, and we were having to treat the results of that. So we had kids with severe respiratory distress from the teargas, people with dog bites. I remember one time having to go out and see a mother who had a twenty-four hour old baby that was left in the rain because her structure had been torn down.

And a reporter asked me, "Does this make any difference to you"? I said...in no ways could I from that point on ever put on that SADF uniform again. Because you see, to the kids and to the people in Crossroads, those riot police in camouflage uniforms were the Amajoni; they were the soldiers. And to put on that uniform would be to identify with those Amajoni who had actually been oppressing the very community that I served.

Some individual submissions

Pastor Craig Botha, former radio operator and diver in the South African Navy

30 Pastor Craig Botha was a seventeen-year-old conscript in the SADF serving in Bloemfontein in 1978. After his basic training, he decided to join the navy because he did not want to serve on the border. He remained a member of the permanent forces for four and a half years and was deployed, first as a radio operator and later as a diver, on a strike craft based at Salisbury Island in Durban. He participated in various military activities in neighbouring countries.

Our mission was to launch these inflatable craft with these highly trained reconnaissance commandos on board into the water off various strategic points, [whereupon] the commandos would go ashore and they would blow up installations and generally cause havoc. And then they would escape via the sea back to our waiting strike craft and we would leave the area at high speed.

So during the time I served on these attack vessels, we performed a number of operations of which we were instructed to keep secret our destination

and operation. Often we were going to sea for a period of time and were not told our destination before departure. On a number of occasions, we were visited by a number of high ranking defence force personnel who wished us well and spoke to us about the importance of our mission and what we were doing to protect the country from a total onslaught, etc...

I was very politically naive and it was only later that I realised what a lie I had been involved in. As I look back on this period, it is with deep shame and regret that I took part in these acts of sabotage and violent destabilisation. The struggles that our neighbouring states have had to undergo, even to this time, is partially attributable to these missions.

- 31 However, Pastor Botha devoted most of his testimony to talking about his conversion to Christianity and the various reconciliation projects in which he and his congregation are currently involved.⁹

Mr Ian Liebenberg, former non-commissioned officer and platoon commander on the Namibian/SWA Border

- 32 Mr Liebenberg, socialised as a typical white, Afrikaans-speaking male during the 1970s, described his training as an infantryman and the difficulties he experienced coping with his role as the eighteen year old commander of a platoon of thirty people, most of whom had an education below standard eight (grade ten). In his testimony he stated that:

What most of us were getting both disillusioned with, tired of and what I think, in a very real sense, moulded our moral decision - making a choice for a new future and for transformation of society - was, I think, the feeling that these politicians and political generals directed and dictated politics and war from Tuynhuis and the Union Buildings. And that in many cases, especially the politicians, had no personal experience of war and its impact on humans, the land and nature. Not to mention the individual or collective human psyche.

- 33 He went on to ask:

What about those people in the existential vacuum from both sides that are now left with [the problem of] trying to figure out where to go? The change of government doesn't necessarily provide you with a job or resolve the problems you have as a result of a long history of alienation.

⁹ These are described in the chapter on *Reconciliation*.

Mr Tim Ledgerwood, a former conscript

- 34 Mr Ledgerwood had a privileged upbringing in a white, English-speaking, middle class and deeply religious home. He said that:

The society that I grew up in asked no questions about military duty (this was in 1980). You went to school, you registered when you were sixteen, you went off and did your national service, you came home and life carried on as normal. Your girlfriend was proud to have somebody who was on the border, and the war was far, far away. None of us had ever been to Namibia.

- 35 Mr Ledgerwood started his national service in January 1980, with the Second South African Infantry Battalion in Walvis Bay. He described his growing disillusionment, first becoming a conscientious non-combatant and eventually, towards the end of his second year, going AWOL (absent without leave) with the intention of joining the ANC's military wing.

Being young, foolish, unprepared and on my own, I was caught as I was about to climb over the border fence at Ramatlabana. It was then that the nightmare began. I was handed over to the Zeerust branch of the security police who interrogated me for about two weeks or so. I can remember very few details except the screaming. I was nineteen years old at the time. The dark nights of my soul had begun...

- 36 He was later handed back to the military police and eventually sentenced to six months detention.

My life after that was substantially and subtly different. I found myself emotionally exhausted for years afterwards - I'm talking twelve years afterwards. My sense of dissociation and alienation was acute. Before the Commission, I'd never met anybody who'd been through even remotely similar experiences to these, except for one guy who is now my best friend, a guy who spent his time instructing UNITA in Angola and had gone through some quite harsh things.

Professor Johan Hattingh, former captain in the Citizen Force, Stellenbosch Commando

- 37 Professor Hattingh, currently a professor of philosophy at the University of Stellenbosch, did his initial one-year of training as an infantry soldier in 1973.

The rest of his national service was completed as part of the regiment of the University of Stellenbosch and, from the beginning of the 1980s, as a member of the Stellenbosch Commando. He described his gradual shift from whole-hearted support for and full co-operation with the national service system in 1973, through disillusionment with the University of Stellenbosch regiment, to his reluctant participation in and passive resistance to the militarisation of his home town and his professional and private life.

We then had the opportunity to apply to be transferred to Stellenbosch Commando and we thought that would be better. We would not be transferred to border duty far away; we would be in our own home town. But that turned out to be more stressful as it were because, in a sense, we were now in military uniform walking around in our own home town, in our own backyard. We were in the public eye of our friends and family...

Besides Saturday mornings spent away on shooting practices, during the mid-1980s, there were lots and lots of twenty-four hour standbys we were put on. There were roadblocks and you had to do duty over and over again. At that stage, Stellenbosch Commando was an all-white commando and the perception of the enemy was that it [consisted of] people on the other side of the colour line.

Mr John Deegan, conscript in the SAP and former member of Koevoet

38 Mr Deegan gave detailed testimony to the Commission about his initial involvement with the Security Police and his subsequent life in the early to mid-1980s as a "Koevoet killer", a member of a notorious SAP counter-insurgency unit on the Namibian border. His life vividly illustrates the continuing, destructive psychological toll of these activities on him and those around him.¹⁰

Mr Sam Sole, former conscript in the townships

39 Mr Sole submitted a first hand account of the experiences of a SADF soldier/national serviceman in the townships of the Eastern Cape.¹¹

40 Sam Sole portrays the staggering gulf between the official instructions ("as members of a disciplined, effective and respectful security force each individual's conduct must at all times be responsible and courteous")¹² and the daily and nightly behaviour of the white troops and the police in the townships. For example:

¹⁰ John Deegan's testimony is dealt with in some detail in the chapter on *Reconciliation*.

¹¹ At the time of submission Mr Sole was a journalist with the *Sunday Tribune* in Durban.

One night ... we are hanging around and suddenly one stone smashes the windscreen of an SAP bakkie and two cops with shotguns bound off like dogs let off the leash. They stalk the one lone stone thrower and corner him. He continues his desperate barrage and they shoot him dead. He's about sixteen; he was a kid.

- 41 Sole also tried to describe his own reaction to the "insane situation" in which he found himself :

My own guilt at my inaction in the face of this brutality, as well as the sheer physical impact of it, created an enormous tension and conflict of behaviour. My response was enough to get me labelled a 'Kaffir boetie' and a 'Kommunis', yet it is impossible to isolate yourself completely. You have been living fart to fart with these people for nine months. They have humanity although they abuse it in others and you have to continue to live with them. So you are forced to compromise yourself and, treacherously, you lose that sense of outrage until the next time.

Mr Eric Rautenbach, who opted for exile rather than conscription

- 41 Writing from Canada, Mr Rautenbach told the Commission how he escaped conscription by leaving the country.

The people I went to school with and my other white friends and acquaintances all went one by one to do their military service. One couldn't really blame them - how do you go against such a big machine? You have nowhere to hide, nowhere to run. ... I made the decision eventually to break the law ... to finance a ticket out ... I lived and scavenged through fourteen countries. I was getting tired. It was a confusing time. I was sick and I'd lost faith in humanity. I had no country, no visas, no work permits, no future and no food. I stole food to eat. I was truly homeless even more than the homeless of South Africa [were]. I had no tribe, nothing. I trusted nobody. Round and round I went, using my white skin to blend in with the university students, the vacationers and young travellers from South Africa, Canada, Australia and Europe ...

I finally returned for a brief visit to South Africa this year, twenty-one years after leaving, to take my father's ashes to the mountain ... Every day my soul cries for home, but home is not home anymore.

¹² Brigadier van der Westhuizen's personal message to each soldier.

Value of individual submissions

- 43 These individual submissions highlighted a number of important points.
- 44 First, they provided glimpses of the different ways in which some white men struggled with the issue of compulsory military service. These included those who objected on religious and/or political grounds and were imprisoned; those who went into exile; those who openly mobilised opposition to conscription; those who participated reluctantly and opted for a more passive style of resistance, and those who tried to join the military 'enemies' of the previous state.
- 45 Some of the submissions focused on military activities in neighbouring countries, especially in South Africa's 'fifth province', Namibia. This highlighted the fact that there are large numbers of victims in the southern African region whose stories were not addressed by the Commission.
- 46 Many of these individual testimonies helped to achieve one of the purposes of the special hearing, namely to draw attention to the reality of post-traumatic stress disorder and to the urgent, deep challenge of dealing with the psychological consequences of past conflicts. In the words of Commissioner Wendy Orr, who spoke after John Deegan had completed his testimony:

John, it's very difficult to respond to a testimony like yours. It engenders so many feelings in all of us. In me, it engenders feelings of horror, of pain, of anger but I think, most overwhelmingly, of sorrow that young men like you - and not only those that were in the SADF but those who were in MK and APLA and other forces - that young men like you had to deal with that insanity [of the war] ... We're going to need to deal with the issues and challenges that you have raised to-day ... I remind you that this is not the end as you yourself know. There's still a long way to go, and we wish you every support and courage and affirmation in that journey.

■ THE REALITY AND CHALLENGE OF POST-TRAUMATIC STRESS DISORDER

- 47 In an oral submission by a psychologist, Mr Gary Koen, and in the written submission by Ms Trudy de Ridder, a number of the common symptoms of post-traumatic stress disorder were highlighted. These include recurrent nightmares, anxiety about and feeling tainted by death, insomnia, heightened aggression, social withdrawal, substance abuse, difficulties in interpersonal relationships and generalised distrust of others.¹³ Mr Koen emphasised that these symptoms can result from a range of events, such as a single episode of life-threatening harm and violence (for example rape and assault). In his submission he focused on war-related incidents, in particular those linked to guerrilla warfare:

Guerrilla warfare, the type of war fought on the South African borders for the past twenty years, contains many unique features not seen in conventional warfare. These include hit and run tactics, surprise ambushes, extensive use of landmines and booby traps, as well as the stress experienced by people who are primarily town dwellers fighting a bush war. Unpredictability characterises this type of environment and the uncertainty of either attack or safety leads to a high level of anxiety and hyper-arousal in anticipation of the next attack.

Whilst the majority of the South African troops were not involved in actual fire fighting, a significant number were exposed to the conditions exposed above. It is these soldiers who have been most likely to suffer the effects of such stress.

- 48 As an illustration of what it means to suffer from post-traumatic stress disorder, he described the therapy he conducted with a member of the medical corps in the operational area:

S. would often chastise himself for having let others die or even accuse himself of having killed them. His guilt seemed not only irrational but also completely unfair.

Certainly the most painful moment in the whole treatment occurred when he lamented the death of the child, the child who died in his arms, and perhaps the most brutal moment occurred when he smashed his fist into his own face, blaming himself for having caused the child's death. The contrast between the two experiences was marked.

¹³ See also chapter on *Consequences of Human Rights Violations*.

The first experience evoked an entirely human reaction, the pain of all those who died becoming sensed around this experience of a solitary child's death. There is nothing more vulnerable and in need of protection than a child, and there is little else that shows up the barbaric nature and violence of war than when a child is killed. S. accessed this awareness in the most painful way; his grief was shy of the most profound despair.

Simultaneously, this experience gave rise to the most abusive and seemingly inexplicable guilt and self-condemnation. In this instance, what required recognition, understanding and containment was [the fact] that there really was nothing that S. could do. His feelings resulted from the tragic consequence of being placed in a situation where he was impotent and helpless. His immense guilt was a reaction against this experience of helplessness. The child in his arms was helpless, and the child died.

Helplessness is equivalent to death, so rather than acknowledge his helplessness, he would condemn himself for living and blame himself for the child's death. S's fantasy was that if he [had been] a doctor with somehow the skill to save the child it would have been different. This is known as failed enactment whereby the veteran, by simultaneously experiencing the horror of the incident, also has an anticipatory plan of action to remedy the situation and in failing to do so suffers the consequences for that failure indefinitely.

This profound experience of guilt is not something essentially resolvable. Guilt is integral to the human experience, because it is from the experience of guilt that one draws the necessary insights into the morality of our actions - how they affect ourselves and others. As such, guilt is necessarily ambiguous and it is this aspect that facilitates a movement beyond this stuckness (sic) that characterises traumatic guilt. It provides the possibility of finding some alternate enactment for the image that haunts one, of undergoing personal transformation around that image.

S. had to recognise not only how much he had suffered but also how glad he was that he was alive. Perhaps the most uplifting moment in the whole treatment was when S. welcomed himself back. He allowed himself the pleasure of living again, bringing both relief and joy.

- 49 A summary and extracts from a mother's letter, written in Afrikaans, to Archbishop Tutu is further illustration of the various symptoms of post-traumatic stress disorder:

My son was normal and had a happy childhood and successful career until his compulsory enlistment in the army for border duty. Here his problems started, i.e. serious drinking, trying like so many others to forget. He could not come to terms with the horrors of war ... His wife divorced him, leaving a seven-year-old son without a father.

50 His parents, who were pensioners, were devastated. They lost their house (literally) and their son (figuratively). He became an alcoholic. Ministers and family and friends shunned him. Eventually, the son became aggressive and assaulted his mother.

51 The mother wrote that she had no option but to "throw him out of the house". She says, "if the army could forget" then she "will have to as well". The letter continued:

One morning a 'bum' will be found dead - a child of God whose only mistake was to fight for his country... When you see the mothers sobbing for their children on TV you can understand how I feel. I hate the government for turning my son into a zombie. Somewhere, someone should start a place for such boys, because when he marches his troops through the night there must be many others doing similar things.

52 The following is an extract from a written statement to the Commission by Ms Anne-Marie MacGregor whose son, Wallace, died while he was doing duty in the SADF on the Namibian-Angolan border ¹⁴:

And then on Thursday, March 9, I was confronted with the total shock of the news of his death. I was told that my son was killed a few kilometres from Oshakati. He was brought home wrapped in a thick, sealed plastic bag. The instruction was that the plastic bag should not be opened. The only thing I know about the state my son was in is that all his limbs were intact. And this I heard from his uncle, who could only establish this by running his hands over this plastic bag.

Again, I accepted this as military law. You are not allowed to have the last glimpse of your own child - even as he lay there, lifeless. On the day of Wallace's funeral, his coffin wasn't opened. It is ten years since I last laid eyes on my child - nine years since he was laid to rest. But in these nine years, I've been struggling to complete the process of mourning for Wallace.

¹⁴ This statement was read on behalf of Ms MacGregor by Committee member Pumla Gobodo-Madikizela at the Commission hearing in Paarl in 1996. It is included here to help illustrate the traumatic impact on families, one of the objectives with the hearing on conscription.

A part of me wonders if in fact it was him in that plastic bag. How can I lay him to rest within my heart, if I didn't see him go? When I lost my mother, whom I loved very much, I saw her, I touched her and therefore I was able to separate from her, release her and move on.

But with Wallace, there are so many questions that are still unanswered. In my struggle with my grief, I would like to know where exactly he died. How it had happened. Who was there with him when it happened? Did anybody help him to prevent it from happening? Who was the doctor who attended to him? I've never had the opportunity to ask these questions. Nobody has ever explained anything to me about my son's death.

They can say nobody asked, but who do you ask? And even if you do, you will not get any answers.

I sometimes see Wallace in the streets. I remember two distinct occasions, when I thought I was seeing him. And it turned out to be somebody who looked like him. My grief becomes more intense on the anniversaries of my son's death and on his birthday. He would have turned thirty in January. I've kept an album of all his photographs, as a way of dealing with the many feelings I have about the loss. But it is very hard, when there are so many things you are not sure about.

- 53 In a very poignant follow-up to this statement, the Commission facilitated a meeting between Ms MacGregor and a young man who had been with Wallace when he died. He told her exactly what had happened. As he described Wallace's last moments, she looked at him and said, "So, Wallace is really dead" and wept inconsolably for about ten minutes. It was only at that moment that she actually acknowledged and accepted that her son was dead.
- 54 The transition to a democratic South Africa, coupled with the very public process of the Commission, has complicated the healing process for many ex-convicts suffering from post-traumatic stress disorder. Many of the convicts treated by Ms De Ridder reported a recurrence and/or intensification of their symptoms as a result of some of the testimonies to the Commission and, particularly, the trial of and television documentary ("Prime Evil") about Eugene de Kock. To some extent, the Commission has helped release traumatised ex-convicts from 'the prison of silence' surrounding their experiences and, more importantly, their emotional responses to their experiences. Ms De Ridder says, however, that many others experience the current process as a form of retraumatisation:

While many of the conscripts referred to here do not differentiate their anger to the old or the new regime, some focused intensely on their sense of being abandoned by their old leaders. The old society did not provide for any process of reintegration and failed to acknowledge their sacrifice. The new society condemns them as perpetrators, as defenders of apartheid.

55 In response to Mr Koen's submission, Commissioner Wendy Orr said:

I feel that you were describing the symptoms of post-traumatic stress disorder. Very many people in this room recognise those symptoms either in themselves or their brothers or their friends, their husbands, their boyfriends. Which leads me to realise that there are so many damaged and injured young men, amongst others, in this country who have been really very severely damaged by the experience of conscription. This leaves us with an immense challenge of what we do to heal that damage. That's one of the challenges that faces not only the Truth and Reconciliation Commission, but all of us. Thank you for presenting that challenge to us today.

■ THE WAY FORWARD

56 Submissions at this special hearing made it clear that dealing with the legacy of past armed conflicts will require a concerted effort, with contributions from the state, organised civil society and individual citizens.

57 The role of the state was illustrated by Lieutenant Colonel Botha's submission on a defence force project, Curamus Care for the Disabled, which was formed in 1990 to handle the treatment and aftercare "of our men and women who have been serving in the forces and have been injured in the process". This is an interdepartmental project which includes those injured while serving in the police and correctional services. Sitting in his wheel chair, Lieutenant Colonel Botha emphasised that the project, which is his full-time responsibility, includes those with physical and psychological disabilities such as post-traumatic stress disorder. He encouraged those who made individual submissions, like John Deegan, to come and discuss with him the possibilities of and procedures for applying for a military pension. He also spoke in his capacity as chairperson of the Curamus Association for Security Service Disabled, a voluntary association formed in October 1990 to give disabled members a platform to deal with their problems – for example finding employment within government and the private sector.

58 Mr Ian Bruce highlighted the possible role of groups in civil society. He shared the vision of a fellow ex-combatant, Marius van Niekerk (who is still based in Sweden), of forming a South African Veterans Association (SAVA). SAVA's basic mission, following in the footsteps of Vietnam veterans' self-help organisations, would be to create a formal network to help ex-combatants from across the political spectrum to come together and help each other with problems like post-traumatic stress disorder. Some specific projects might include helping ex-combatants to tell and write their stories, supporting the campaign against the use of landmines, initiating and supporting relief and reconstruction projects to help local populations in former operational areas, linking with churches and official military medical services, setting up and supporting special training programmes in post-traumatic stress disorder treatment for interested health professionals and so on. John Deegan, who has been working with Marius van Niekerk, expressed the vision of SAVA as follows:

So what I hope for, for the future then, is to find out answers to a lot of questions, but obviously within a structure. With the help of the Commission and, hopefully with the government's backing, we can possibly get a veterans' association off the ground which Marius and others have been working on for some years now. It hasn't been formalised, but there is a constitution, there's something on paper, it's concrete. All it has to do is get approval and we put it into gear ...

It's not a bunch of ex-soldiers getting together, having a braaivleis and swapping bush stories. What it is, is SWAPO, ANC, APLA, Umkhonto weSizwe, Koevoet, 'Reccies', all the units, every single unit, everybody who ever was trained in any way militarily getting together and just trying to make some kind of sense of the mess we made and doing something about it. Like, we talk about reparation and remorse and all this but, until we actually do something, like, tangible and physical, it's all words, it means nothing. So I'd really like to see the South African Veterans' Association, if that's what it's going to be called, get off the ground. And hopefully we can convene a national meeting at some point where we can express the aims of that and make it open to absolutely everybody who feels they might have a problem with post-traumatic stress disorder or anyone who was just connected with this whole conscription, with the whole military thing.

Part of the SAVA thing, then, would be to go back to Namibia, to actually go back and see the victims of our actions, their families. And to go and make

reparation to the Namibians and to try and help and then just make sense of what actually happened there because it was absolute madness.

- 59 Various submissions, for example that of Professor Johan Hattingh, illustrated some of the ways in which individuals could creatively express their shared responsibility for what went wrong in the past and their commitment to a new South Africa:

To conclude, as I pointed out at the beginning, this is a personal statement describing some of the events, emotions and positions that I have experienced and lived through whilst serving as a conscript in the SADF. With hindsight, it is clear that I have collaborated with a military machine that has permeated throughout society and penetrated it very deeply. Insofar as this is the case, I share responsibility for the pain, suffering and death inflicted by that military machine within South Africa but also far outside of its borders.

I could argue that I am guilty of nothing because I only acted on orders handed down to me in terms of the law of the country. I prefer not to do so but rather, without sounding sentimental or trite, to tender my sincere personal apologies to all fellow South Africans who have suffered directly or indirectly from the actions of the SADF during the years of apartheid.

Looking back on the sad history related above, there is nothing that I am and can be proud of. On the contrary, I am humbled by a deep sense of shame for the fact that it only slowly dawned upon me that I was participating in, and then virtually did nothing about, the system that I described.

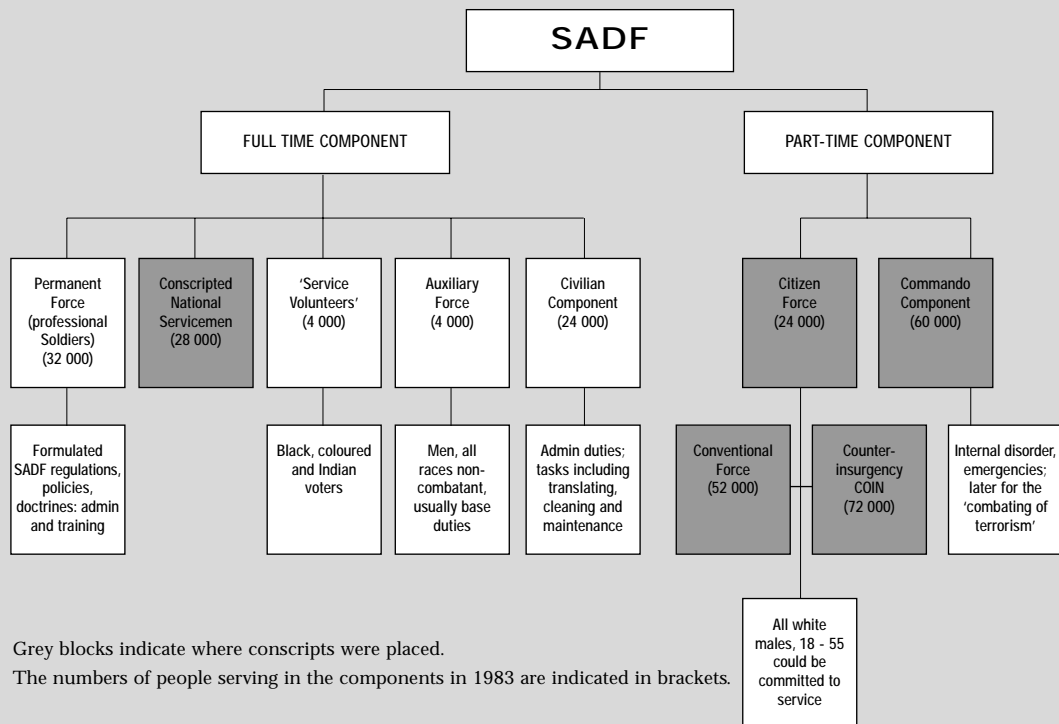
This is underlined by the ironic fact that I started to question the military structures I was conscripted into on the basis of what it did to me personally and not so much on the basis of what it did to others. The way in which I tried to compensate for this moral insensitivity is now currently to actively participate in community initiatives, striving towards the reconstruction and development of our country.

It gives me a deep sense of satisfaction to work with people who were formerly the declared enemies of the SADF or Citizen Force towards such seemingly small goals as securing a shelter for street children in Stellenbosch or helping community organisations to articulate their needs and translate them into viable development programmes.

- 60 Compulsory military conscription required many young white males in South Africa to face the reality of apartheid, bringing them face to face with the knowledge that a war was being fought. Some were socially conditioned to accept conscription as a national duty. Some saw no other option. Some saw options but were afraid of the consequences of refusing. Some were shocked and traumatised by what they experienced and began to question the world view they had always accepted. A few believed that, for a variety of very different reasons, it was their moral responsibility to refuse to serve in the military.
- 61 Often a change of attitude or a refusal to serve threw individuals, families, friends and even entire communities into crisis, triggering self-analysis and moral debate. Although the resistance against apartheid has always involved a small number of white people, conscription put young white men directly in touch with the moral costs and human consequences of maintaining it by military means.

■ APPENDIX 1

Structure of the SADF



■ APPENDIX 2

Table indicating number of people serving in the Civilian Force in 1980 and 1992

Year	Total Strength of CF in the SA Army	Percentage of army forces available for operation
1980	92 300	32%
1992	243 000	45%

Table indicating the Operational Deployment of Servicemen (a company normally consisted of 120 men)

Year	No of Companies
1983	32
1984	48
1985	72
1986	90
1987	84
1988	82
1989	72

■ APPENDIX 3

Year	Requirements	Initial Service	Compulsory Period of Service	Continuous Service Commitments
1946 - 51	Only volunteers	1 month	4 years	2 x 3 day camps
1952 - 61	Drafted numbers	3 months	4 years	1 x 30 day plus 2 x 15 day camps
1962 - 66	Drafted numbers	9 months	4 years	2 x 21 day camps
1967 - 73	Compulsory Service	12 months	10 years	3 x 26 days plus 5 x 12 day camps
1974 - 76	Compulsory Service	12 months	10 years	5 x 19 day camps
1977 - 82	Compulsory Service	24 months	10 years	8 x 30 day camps
1983 - 1992	Compulsory Service	24 months	24 months	6 cycles of 120 days each

■ APPENDIX 4

Legislation

In terms of the South African Defence Act, 1912, the Union Defence Force was established and recognised as the armed force of the Union of South Africa. This Act was later replaced by The Defence Act, No 44 of 1957. All aspects of the SADF were thus controlled by law, and the levels of force used were provided in accordance with the Act.

In terms of Section 2 of the Act, females and persons not classified as white were excluded from compulsory military service. The tasks assigned to the SADF were predominantly within the scope of Section 3(2) of the Act:

Section 3

(2) The South African Defence Force or any portion or member thereof may at all times be employed -

(a) on service in defence of the Republic;

(b) on service for the prevention or suppression of terrorism;

(c) on service in the prevention or suppression of internal disorder in the Republic;

(d) on service in the preservation of life, health or property or the maintenance of essential services; and

(e) on such police duties as may be prescribed.

Special Hearing: Children and Youth

■ INTRODUCTION

- 1 In light of the direct impact of the policies of the former state on young people and the active role they played in opposing apartheid, the Commission decided to hold hearings on the experiences of children and youth. Many of those who testified before the Commission were eighteen years old or younger when the gross violations of human rights occurred.¹ However, it was considered important that those who were under eighteen years of age during the life of the Commission be given the opportunity to testify. Indeed, before these special hearings, few children under the age of eighteen had approached the Commission to tell their stories.
- 2 The idea of special hearings on the role and experiences of children and youth was widely supported by a range of non-governmental organisations (NGOs), which were invited to participate in the preparatory process.

Children subjected to gross human rights violations

- 3 The hearings provided an opportunity to focus on the impact of apartheid on children and youth. Over the years, children and young people were victims of and witnesses to of many of the most appalling gross human rights violations in South Africa's history. The effects of exposure to ongoing political violence may have had serious effects on the development of many of these children.² It was, therefore, considered imperative that the trauma inflicted on children and young people be heard and shared within the framework of the healing ethos of the Commission. Recognition of the inhumanity of apartheid was seen as a crucial step towards establishing a human rights framework for children and young

1 The Commission felt that those testifying as adults had had the benefit not only of time (for healing), but also the opportunity of applying an adult perspective to memory and the articulation of their experiences. For example, Mr Murphy Morobe (like many other student leaders) was under eighteen at the time of his involvement in the student movement. He spoke, however, from the perspective of an adult who had recovered from the trauma of his experience (Soweto Hearings, 23 July 1996).

2 This view was supported by a statement made by Mr Nyanisile Jack at the Eastern Cape Children and Youth Hearings, East London, 18 June 1997.

people in order to ensure that they be given the opportunity to participate fully in South Africa's new democratic institutions.

- 4 The report does not, however, claim to be representative of all children and youth. Given the Commission's focus on gross human rights violations, those who gave evidence at the hearings on children and youth spoke mainly of the suffering of young people. Few chose to speak of, or to report on, the heroic role of young people in the struggle against apartheid. Many saw themselves not as victims, but as soldiers or freedom fighters and, for this reason, chose not to appear before the Commission at all. Others, fearing reprisals from family or community, remained silent. Sometimes close family members were unaware of or strongly opposed to the political activities of young people. This accounts for any apparent contradictions between the perceptions of mothers and other family members who gave testimony and those of the many young people who excluded themselves from the hearings.
- 5 These stories are not, consequently, captured in what follows. No concerted attempt was made by the Commission to encourage those young people who *did* attend the hearings to speak of themselves as heroes who had sacrificed their education, their safety and often their long term opportunities through their active resistance to apartheid.

A culture of human rights and children's rights

- 6 In 1995, South Africa ratified the United Nations Convention on the Rights of the Child (CRC), an important step towards securing South Africa's rightful place in the world community of nations. The CRC imposes important obligations and responsibilities on its signatories, including that of "honouring the voice" of children and youth, by giving them an opportunity to express their feelings and relate their experiences as part of the national process of healing.

Participation of children under eighteen years of age

- 7 In terms of the CRC, a child is a person under the age of eighteen years of age and is entitled to special protection by government and society. A critical debate arose before the hearings as to whether or not children under the age of eighteen should appear and testify at the hearings. It was felt that the formal structure of the hearings might intimidate children and subject them to additional trauma. In order to discuss this issue, the Commission held a series of meetings and workshops and sought the opinions of international organisations such as the United Nations

Children's Fund (UNICEF) and over thirty South African NGOs working with children and youth. The final decision of the Commission was that children under the age of eighteen would not testify. Instead, NGOs and other professional people working with children were asked to testify on their behalf. The Commission did, however, make extensive efforts to involve children directly in the hearings and in the collection of data before the hearings.

Regional hearings

- 8 The special hearings on children and youth were held regionally. Each regional office hosted a hearing for the area covered by that office.
- 9 Throughout the country, school children participated in the hearings and listened to the evidence presented. At the KwaZulu-Natal/Free State hearing, school children from a number of schools presented a play and other schools performed songs. A dramatic presentation by school children of the Soweto uprising was a highlight of the hearing hosted by the Johannesburg office, moving members of the audience to tears. This hearing was opened by Ms Graça Machel, chairperson of the UNICEF Study on the Impact of Armed Conflict on Children, who brought an important international perspective on this issue. In the Eastern Cape, musical presentations by school choirs assisted in the process of reconciliation while, in Cape Town, three high school students read a submission by Pamela Reynolds and Andrew Dawes on the impact of apartheid on children.

Creativity and flexibility

- 10 The special hearings on children and youth were more flexible than other hearings of the Commission, in that they allowed participants to reflect on or critically analyse the root causes of apartheid and its effects on children. Most parties providing testimony supplied written submissions ahead of the hearing and were asked to summarise their submissions orally and answer questions posed by the panel. The hearings also allowed for the participation of children in ways other than by testifying; this included finding creative ways to access and share the children's experience. Before the KwaZulu-Natal/Free State hearing, for example, children spent a day telling their stories and making drawings that reflected their experiences. These were shared at the hearings the following day.³

³ It was felt that one day for hearings such as these was insufficient. This became particularly evident at the Gauteng hearings which ran very late and at which some who were scheduled to speak were prevented from doing so. The three days devoted to the Cape Town hearings was more adequate.

■ OVERVIEW OF THE EXPERIENCE OF CHILDREN AND YOUTH

- 11 The South African social fabric was shaped by apartheid laws and structures that exposed the majority of South Africa's children to oppression, exploitation, deprivation and humiliation. Apartheid was accompanied by both subtle and overt acts of physical and structural violence. Structural violations included gross inequalities in educational resources along with massive poverty, unemployment, homelessness, widespread crime and family breakdown. The combination of these problems produced a recipe for unprecedented social dislocation, resulting in both repression and resistance.⁴ This contributed to a situation that made possible the gross human rights violations of the past.
- 12 Many white children, on the other hand, were raised in an environment which condoned racial prejudice and fear of the 'other', while demanding unquestioning submission to the authority of family and state. The structural and legislated segregation of apartheid ensured that young white people were isolated and separated from their peers in other race groups – in their homes, schools, communities and every other aspect of their lives.
- 13 Most of South Africa's children were born and grew up in a context of conflict. The Reverend Frank Chikane described the situation in 1986 as:

A world made up of teargas, bullets, whippings, detention and death on the streets. It is an experience of military operations and night raids, of roadblocks and body searches. It is a world where parents and friends get carried away in the night to be interrogated. It is a world where people simply disappear, where parents are assassinated and homes are petrol bombed.⁵

- 14 Resistance was fuelled by socio-economic deprivation, coupled with state oppression. Many youth were inspired to seek channels through which to fight for better living conditions. At the Eastern Cape hearing, Mr V Mbinda, a member of Pan Africanist Congress (PAC) spoke of the poverty of his home and the way he felt about it:

It caused a lot of anger when you asked your mum why she could not afford a pair of shoes when others can. You always want to commit yourself to

⁴ Thomas, A. 'Violence and Child Detainees' in People and Violence. Eds. B McKendrick and W Hoffman, Oxford University Press 1990.

⁵ Burman, Sandra and Reynolds, Pamela, Growing up in a Divided Society: The context of childhood in South Africa. Ravan Press in association with the Centre for Cross-Cultural Research for Women, Queen Elizabeth House, Oxford University, 1986.

something that would neutralise that anger ... we joined because of that anger that we inherited from our homes.

- 15 These conditions led to the recognition by many of South Africa's children that they were being denied opportunities to take up their rightful place as South African citizens. According to testimony at the Athlone hearing, children had to make choices about whether to avoid, participate in or lead the resistance. Many of South Africa's children did not stand passively by, but actively disputed the legitimacy of the state. In doing so, they contributed to the dismantling of apartheid.
- 16 Very early on, the former state became aware of the pivotal role of children and youth, identifying them as a serious threat and treating them accordingly. Dr Max Coleman spoke of the waging of an undeclared war against children and youth, in which they became the primary targets of detention, torture, bannings, assassination and harassment of every description.
- 17 The rise of young people to leadership positions was also seen as a challenge to the patriarchal authority of some of the older men, leading to intergenerational conflict between the young comrades and conservative elders. In the process, violence was unleashed against, witnessed, and perpetrated by the young. Many young people felt that the only means of dealing with systemic violence was to fight back, which led to many situations of counter-violence. Ms Sandra Adonis, who became an activist at the age of fifteen, commented at the hearing in Athlone:

Although we have done things that we are not very proud of, but the reasons why we have done it we are proud of them, because today we can stand with our heads up high and say that, together with the nation, we have done it.

- 18 The role of children and youth was crucial in opposing the apartheid system. However, in the process, they were drawn into an arena that exposed them to three particular kinds of violence: state oppression, counter-violence and inter- and intra-community violence.

State oppression and counter mobilisation

- 19 The role of youth in resisting apartheid dates back to the formation of the militant African National Congress (ANC) Youth League in 1943. The militancy of the youth provided the impetus for the Defiance Campaign of 1952 and the drafting of the Freedom Charter in 1955. In the 1960s, students were amongst those who rose up

in their thousands to protest against the pass laws. The state's response to these peaceful protests was mass repression. Many youth saw no option but to leave the country in order to take up arms and fight for liberation. Umkhonto weSizwe (MK), formed in 1961, drew many of its recruits from the ranks of the youth.

- 20 Children and youth faced the full force of state oppression as they took on their role as the 'foot soldiers of the struggle' - as what were called the 'young lions'. Youth challenged the state by organising and mobilising their schools and communities against illegitimate state structures. Mr Potlako Mokgwadi Saboshago (first name and title please), a student activist from the East Rand, described the role of students thus:

After some time, the parents stood back because, when we held meetings at school, the police would come and interfere with those meetings and they would shoot teargas and, together with our parents, we would become victims of the police interference.

- 21 The threat which the youth presented is evidenced by the backlash from the former state which used its oppressive armoury against the young.
- 22 In June 1976, the student revolt that began in Soweto transformed the political climate. One hundred and four children under the age of sixteen were killed in the uprising and resistance spread to other parts of the country. Dissent by the children and youth of South Africa cast children in the role of agents for social change, as well as making them targets of the regime. Classrooms became meeting grounds for organisations such as the Congress of South African Students (COSAS), which was formed in 1979 and ultimately boasted a membership of over a million students. The security police clampdown on COSAS resulted in the arrest of over 500 of its members by the time of the declaration of the state of emergency in July 1985.
- 23 The arrest of students and the occupation of schools stirred the determination of many children to resist. Mr Mashalaba (Eastern Cape hearing) said:

We were not passive bystanders but rather acted with the naivete of youth and had no way of knowing how the government of the day would retaliate.

- 24 Many other student and youth organisations emerged, based on differing political ideologies. They too became targets of state repression. Mr Mbinda said:

I can also not forget to quote the PAC whereby it was put in a situation where it could not organise itself, especially in schools. Many of our comrades [were] in schools like Pandulwazi where eleven of our comrades were expelled in 1990.

- 25 Differing political ideologies and affiliations generated tensions within the liberation movement erupting, at times, into overt conflict. Mr Mbinda, for example, spoke of the conflict between PAC and ANC youth in the Eastern Cape when the United Democratic Front (UDF) was formed. He said that the PAC had initially thought that the UDF would accommodate all the liberation forces of the country. He described what the PAC perceived as:

an emerging monopolistic tendency ... There was a faction which was growing to the extent that it affected our lives; it affected our upbringing because it resulted in feuds, massacres and violence. This meant the PAC had to be more militant because, [according] to our analysis and interpretation of the situation, we were not fighting the enemy only, we were also fighting with our fellow brothers.

- 26 The state used various means to suppress dissent. Arrests and detentions removed opponents from the political arena. Courts were used to criminalise political activity. In the 1980s, in particular, student and youth organisations were banned, as were the possession and distribution of their publications. From 1976 to 1990, outdoor political gatherings were outlawed. From 1986, there was a blanket ban on indoor gatherings aimed at promoting work stoppages, stay aways or educational boycotts.
- 27 The security establishment engaged in the informal repression of children by hunting down 'troublesome' youth and developing an informer network. This latter had dire consequences for youth organisations. Stories are told about the transfer of detained children to rehabilitation camps where it is thought that they became informers and participated in counter-mobilisation structures and other state security projects. In the words of Mr Mzimasi Majojo at the Eastern Cape hearing:

Our friends were made to spy on us ... be it girlfriends or boyfriends, were forcibly turned to spy on us for the benefit of the monster.

Inter- and intra-community violence

- 28 Until 1985, casualties were mainly the result of security force action. From 1987, however, vigilantism began to make an appearance. Dr Max Coleman, who made a presentation at the hearing in Gauteng, argued that:

The destabilisation strategy was cold-blooded, calculated, deliberate ... it was about a collusion between various elements who had an interest in maintaining the status quo or at least retaining the power which they had from the apartheid system.

- 29 Vigilantes were recruited from the ranks of the homeland authorities, black local authorities, black police officers and those who wished to protect existing social hierarchies. The state colluded with vigilante organisations in order to destabilise resistance organisations. As migrant hostel dwellers were drawn into the conflict with youth, vigilante attacks came to reflect class, ethnic and geographic differences.
- 30 Many vigilante attacks were rooted in intergenerational conflicts. Some men saw the dramatic surge of women and youth to political prominence as a threat to the patriarchal hierarchies of age and gender. Young people were perceived to be undermining the supremacy of traditional leaders who saw it as their duty to restrain them. Vigilantes mobilised around slogans such as, 'discipline the children', and frequently described themselves as 'fathers'.
- 31 The *Witdoeke* of Crossroads were typical. They called themselves 'fathers' and saw children as having become disrespectful of their authority. In Welkom, another vigilante group, the *Pakathis*, organised in opposition to student boycotts and street resistance. Their rallying cry was, 'spare the rod and spoil the child'. In Zolani, a group of men began enforcing curfews and assaulting children after the commencement of a school boycott in 1985. The Peacemakers of Grahamstown acted against school children engaged in boycotts. There are many examples of such vigilante activities.
- 32 Vigilantism coincided with the state strategy of creating 'oil spots' – that is, establishing strategic bases in townships as a means of regaining control of the population. A second aspect of the strategy involved the co-option of leaders, the counter-organisation of communities and the formation of counter-guerrilla groups. The state supported many vigilante groups by providing funding and training.
- 33 Large numbers of youth, whether politically active or not, were affected by the violence, especially those who lived near the hostels. In many cases, the responsibility for protecting their homes and streets fell on children. Some young people turned their attention to the defence of their communities⁶, redirecting their energies into the formation of self-defence units that were, in their view, justified by vigilante attacks.

⁶ Submission by the South African Human Rights Commission, 'Human Rights Violations by the Apartheid State against Children and Youth', 12 June 1997.

34 Vigilantism was characterised by sudden attacks by an enemy who was frequently a member of the same community. In some cases, families were targeted because their sons had joined self-defence units. Self-defence units were forced to adopt weaponry that was more sophisticated; their knives and *pangas*⁷ were unable to keep the well-armed vigilante forces at bay. In the 1990s, the conflict between the ANC and the Inkatha Freedom Party (IFP) intensified and vigilante attacks increased. In KwaZulu-Natal, in particular, young people were forced to flee to the cities in fear of their lives.

35 Mr Potwalo Saboshego, a seventeen year old activist from the East Rand, spoke of the acquisition of weapons and explosives which were believed to be necessary for purposes of self defence:

The issue of explosives ... they were given to us by some reliable sources because we have to protect ourselves. So that if we see an enemy we should be able to fight - because people were shot at. Some of my friends were just shot.

36 The weapon sources were not always reliable, however. As reported elsewhere, young people often faced the risk that the weapons they received had been booby-trapped by the security forces.

37 The submission of the Inter-Church Youth, based in the Eastern Cape, defended the involvement of young people in violence. Effectively, they saw themselves as 'soldiers' and 'heroes', fighting against an enemy. The submission conceded that youth were both directly and indirectly involved in killings and the demolition of property.

We were part of this as the church youth. One needs to emphasise that this was justifiable for the cause of our liberation.

38 Some young people were recruited into vigilante activities by, for example, being offered money to attack the homes of activists. Two youths from Thokoza admitted to having been recruited by the police for this purpose. Young people were also manipulated by state projects such as the Eagles, which was founded in the early 1980s and came into conflict with organisations like the South African Youth Congress (SAYCO). Groups like the Eagles were involved in activities such as assisting the police to identify activists, launching arson attacks and disrupting political meetings. In 1991, the Eagles were exposed as an official state project.

⁷ A *panga* is large, broad-bladed knife, used for cutting cane.

- 39 Many of South Africa's young people grew up in an atmosphere of imminent danger. They lived with the painful reality of losing loved ones and family members and were often conscious of the burden of responsibility they carried for the lives of others. Their lives were characterised by fear and insecurity. Because the state made no distinction between public and private space, their homes did not provide them with a safe haven. Many children were on the run because they feared for their lives and suffered grave disruptions to their education and development.

White youth

- 40 White youth lived in an altogether different reality. According to Mr Pierre Reynolds of the Democratic Party (DP) Youth:

Classified white under the apartheid regime, I and my peers, enjoyed privileges because of the colour of our skin. We were born with and we were brought up with racist prejudices ... we enjoyed the benefits of apartheid.

- 41 Mr Reynolds attributed the lack of white youth resistance to the system of patriarchy, whereby the young were kept under control by their elders, their cultures, institutions and state systems.
- 42 Young white males were also conscripted into the defence forces.⁸ Through government control of the national media and strategies such as police visits to white schools, young white people were subjected to propaganda. Fear of the 'other' was implanted in children under the guise of an imminent 'Communist' plot, articulated through slogans such as 'total onslaught'. All this contributed to a situation in which most white males concluded that it was their obligation to serve in the armed services.
- 43 White children were offered few alternatives to being part of the white elite. Group Areas and other legislation effectively segregated them from their less privileged peers. They had virtually no contact with black children and lived largely in the racially protected environments of school, family and church. Conflict and political volatility were seen as a threat to the deliberately narrow world order with which they were familiar. White conscripts were used to uphold the *status quo*, with violence if necessary.
- 44 The militarisation of young white boys began at an early age with systems like the cadets, through which they were taught basic military discipline and skills.

⁸ See also chapter on *Compulsory Military Service (Conscription)* in this volume.

Indoctrination, coupled with widespread racist state propaganda, was largely effective in preventing widespread resistance to enforced conscription. Again, according to Mr Reynolds:

In the 1980s, I and my contemporaries - my peers - were at the mercy of a system designed to socialise and condition us into the ranks of perpetrators of apartheid. We were told the army would turn us into men. It was the white man's circumcision school.

- 45 Some white youth who fought in defence of a white South Africa were convinced by their military and political masters that both their own suffering and the acts of violence committed in the process were undertaken for a just cause. Others faced the dilemma of being conscripted to fight a war in which they did not necessarily believe. A minority became conscientious objectors, condemned as traitors to the nation and faced with the choice of leaving the country or being sentenced to six years' imprisonment.
- 46 Some white youth joined the struggle against apartheid through membership of and participation in resistance organisations such as the End Conscription Campaign (ECC)⁹, student movements, such as the National Union of South African Students (NUSAS) or by joining political organisations. Like other activists, they became targets of state violence.

■ EVIDENCE AND EMERGING THEMES

- 47 Statements and testimony provided surprisingly little evidence of violations against children under the age of twelve. It is unlikely that this was a result of under-reporting, as violations perpetrated against the very young have tended to invoke the strongest condemnation. By far the largest category of victims to report to the Commission fell into the thirteen to twenty-four age bracket (see figures 1-4). For this reason, some adaptations to the accepted definition of children and youth were made for the purposes of this report. Children between the ages of thirteen and eighteen experienced violations equivalent to their nineteen to twenty-four year old counterparts, and it was considered that a more appropriate unit of analysis could be achieved by combining these age categories to include young people between thirteen and twenty-four years of age. This reflects, first, the fact that this age group was a clear target for gross human rights violations in South Africa and, second, the fact that those who were more likely to be victims

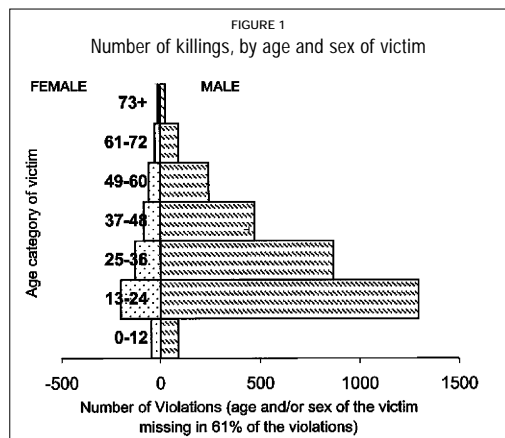
⁹ See chapter on *Compulsory Military Service* in this volume.

of random violence were those who found themselves in exposed situations. Younger children were victims of random violence but were less likely to attend marches or demonstrations, which is where the largest number of random violations occurred.

48 Figures 1-4 reflect evidence gathered by the Commission with respect to the types of violations investigated. They do not reflect a universal experience of violations; only those that were reported to the Commission. Many South Africans who experienced human rights violations did not come to the Commission and are therefore not represented. Many parents testified on behalf of their children. Significant, too, was the fact that many women and girls chose not to testify about violations they themselves had experienced. They spoke instead of the violations committed against others, notably their fathers, sons and brothers. The figures must, therefore, be read within the framework of the Commission's experience rather than analysed as definitive figures of all violations experienced in South Africa from 1960 - 1994.

Killings of children and youth reported to the Commission

49 Figure 1 represents the number of killings reported to the Commission. The left side reflects female victims and the right side male victims. Based on the graph, few children under the age of twelve were killed. The majority of victims of killings reported to the Commission were young men between the ages of 13-24. This can be seen as a reflection of the perceived threat posed by young males to the state, but is linked with other 'gendered' issues about women and their willingness to testify about their own abuses.¹⁰



50 At the Mmabatho hearing, Ms Mary Dikeledi Moreti told the Commission about the day her child was killed. Early in the morning of 28 November 1985, her house was attacked and destroyed by the police, who suspected the family of harbouring 'terrorists'. "Only the toilet was still standing. There was literally nothing in that yard, only the toilet." Her small child was caught in the crossfire: "there were

¹⁰ See chapter on the *Special Hearing: Women* in this volume.

small children in the house, innocent children, like Ronnie who died at the age of five.”

- 51 Ms Joyce Mthimkulu told the story of her son, Siphwe Mthimkulu, at the Commission’s hearings in Port Elizabeth in June 1996. The case of Siphwe Mthimkulu details the tragic layers of abuse that were endured by many activists. Siphwe was a determined political activist in the Eastern Cape from the age of seventeen. His activities centred on his objection to Bantu Education. His participation in COSAS brought upon him the wrath of the regime. He was detained numerous times and subjected to severe forms of torture. He was shot in the arm and faced constant police harassment. To protect his family from harassment, he was continually on the run and, when he did return home, he lived in a dog kennel.
- 52 In 1981, after his release from yet another arrest, his health deteriorated rapidly and he was diagnosed as having been poisoned with thallium. His body swelled, his hair fell out, he could not urinate and he was confined to a wheel chair. Despite the poisoning, he fought to recover and began slowly regaining his health. Throughout his convalescence, Siphwe continued with his political activities and filed a claim for damages against the police in connection with his poisoning. In 1982, he left his home for a check up at the Livingstone Hospital. He never arrived and it was later revealed that the security forces had killed him.
- 53 Mr Lulu Johnson, testifying at the hearing on the death of Siphwe Mthimkulu, described the reality of death many young political activists faced. He referred to the case of Mr Xolani Wonci who was shot by the police. He mentioned the killing of Mr Lungile Tabalaza who ‘fell’ to his death from the fourth floor of the SANLAM building. He spoke of Mr Xolile Maneli who was reported by the police to have committed suicide whilst in custody. Many other killings of children and youth were reported. Some were killed by the security forces; others were killed in random shootings and in intra-community conflicts in the latter part of the mandate period.

Detention and imprisonment of children and youth

- 54 In large-scale and often arbitrary police action, thousands of children, some as young as seven years old, were arrested and detained in terms of South Africa’s sweeping security and criminal legislation. Sometimes, entire schools were arrested *en masse*.¹¹

11 Scott, D. (1997) Submission on Children and Youth. Original source: Lawyers Committee for Human Rights, (1986) *The War against Children: South Africa’s Youngest Victims*. New York.

55 It is clear from the body of evidence presented that large numbers of children were detained during the period covered by the Act. Detention was a major weapon in the former state's armoury of terror and repression. At times, during the years of greatest conflict, children under the age of eighteen years of age represented between 26 per cent and 45 per cent of all those in detention. All the available figures indicate that the largest number of children and youth was detained between 1985 and 1989, during the two states of emergency. Of 80 000 detentions, 48 000 were detainees under the age of twenty-five.¹²

56 Mr Mxolisi Faku of the Eastern Cape described his experiences in detention when he was in standard eight. At this stage, he was a member of COSAS and was engaged in mobilising students and parents about the importance of establishing a democratically elected students' representative council, while also encouraging students to participate in a bus boycott. In 1983, the leadership of COSAS was arrested, followed shortly afterwards by the arrest of other members. He said:

I think the youngest amongst us was ten or eleven years of age and his surname was Majeke. He was in hospital with a bullet in his body. However, after being discharged from the hospital, [he] was taken back into prison.

57 Mr Faku described the torture they experienced at the hands of the police:

They would take our genitals and squeeze them against drawers, hoping to get information, because they were convinced that we worked together with people who were in exile.

58 Fear of detention meant that many young activists were 'on the run' and 'in hiding'. Sandra Adonis, a member of the Bonteheuwel Military Wing, lived 'on the run' until she was eventually captured by the security police:

By the time they got hold of me, I knew their tricks and I was preparing myself all the time for this day. You know, it is like you prepare yourself for death, because you do not know what is going to happen and even if you prepare yourself how much, you will never be able to prepare yourself really.

59 She used various strategies to deal with the police:

I was, like, trying to hit back at him all the time, but also in a very gentle way not to have him think that this is a stubborn woman, because once you

12 Coleman, M. (1997) Submission to special hearing on children and youth, Johannesburg.

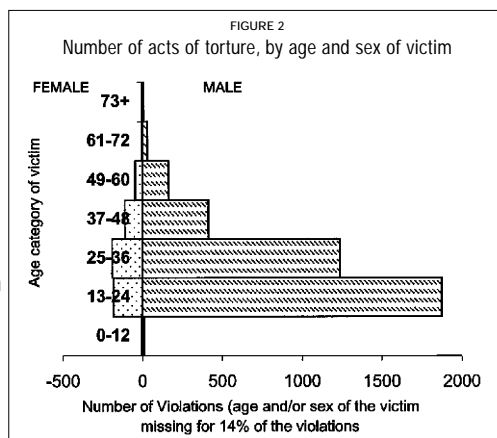
show stubbornness, they would show no mercy.

60 Upon release from prison, many young people were subjected to bannings and other restriction orders, turning the young person's home into another kind of prison. They were forced to report to police stations once a day and were prevented from participating in political and social activities.

Torture of children and youth

61 Torture usually occurred at the hands of the security forces whilst children and youth were in detention. Types of abuse reported by children included food and sleep deprivation, solitary confinement, beating, kicking, enforced physical exercise, being kept naked during interrogation, suspension from poles and electric shocks. Other forms of torture included verbal insults, banging a detainee's head against a wall or floor, use of teargas in a confined space, enforced standing in an unnatural position, beating on the ears, near suffocation and cigarette burns. These forms of torture were compounded by a lack of intellectual stimulation, false accusations, threatened violence to the detainee and his or her family, misleading information, untrue statements about betrayal by friends, pressure to sign false documents, interrogation at gun point and other violations.¹³

62 Figure 2 reveals the evidence gathered from statements made to the Commission about the extent to which young people were victims of torture. The predominant category of those who reported being tortured was, again, young men. Few children under thirteen years of age were victims of torture.



63 Mr Potwala Saboshego described his experience of torture. He was seventeen years old at the time and politically active on the East Rand. He described the circumstances of his arrest and subsequent torture by the security forces:

It was in 1986, in August. I was [returning] from school. When I arrived at home, Security Branch came and arrested me. They told me the details of

¹³ Thomas, A. (1990) 'Violence and Child Detainees' in *People and Violence in South Africa*, Oxford University Press.

my arrest. I was detained at Daveyton police station. On my arrival, they kicked me and assaulted me and they kicked me on my private parts. For the whole day, I was being kicked. Late at six o'clock, they injured my right eye.

- 64 Ms Evelyn Masego Thunyiswa was twenty-two years old when she and a group of her comrades decided to attend the funeral of Steve Biko in 1977. The police stopped them at a train station and detained them. She described the severe torture and sexual assault to which she was subjected:

They assaulted me. The other one came to me and said, "Stand up", and then I stood up. And he said, "Stand up! I want to see your vagina", and they started hitting me with fists. After that, they electrocuted us. This cord was like an electric cord and then you put it on a battery and they used equipment to shock me. I can't remember where did they apply this to my body because, when they switched it on, I felt as if my private parts were falling. I cried for quite a long time. While crying, they were sitting in front of me laughing.

Police provocation, violence and complicity

- 65 At the Soweto hearing, Mr Murphy Morobe, an activist in the UDF, told the Commission:

One episode I should mention is when we went to bury a person by the name of Mashabane. ... As we were marching into the cemetery, even before the coffin was put down, they [the police] opened fire on the mourners. There was no violence there. There was nothing that suggested that police should act that way. But the mourners and family had to flee and leave the coffin there. People had to fall and jump into graves to hide themselves from the barrage that came and more people were killed.¹⁴

- 66 This description of unprovoked violence on the part of the state is only one of many that were submitted to the Commission. In KwaZulu-Natal, evidence was presented which testified to the fact that the police stood by and watched as violence occurred, making no attempt at intervention, nor trying to reduce the intensity of the violence. People ascribed the high levels of death and injury in the province to this failure to react.

¹⁴ Submission by Murphy Morobe at the Soweto hearing, 1996.

67 In the Western Cape, evidence was heard about the notorious 'Trojan Horse' incident during which the police shot a child of eleven years of age. Clear evidence was presented of a police plan in the 'Trojan Horse' incident, and the commanding officer of the police apologised for the actions of the police and their consequences.

Police intimidation at schools

68 As schools became centres of resistance, they were targeted by the security forces. Police intimidation included the occupation of schools, the arrest of students and the creation of a general climate of intimidation.

69 Ms Elizabeth Sizane Mdluli was a student in Nelspruit during the 1986 school boycotts. She told the Commission about the disruption caused at the school by the presence of the police:

During the year 1986 – it was the year where it was not possible to attend school. At school, we normally experienced the visit of the police. Even if we were just seated and we were prepared to learn. You could find us scattered outside because of the teargas which was thrown [at] us ... The police would come, and just their presence would make the school kids feel very uneasy.

70 Mr Potwalo Saboshego described the situation on the East Rand:

By the time I was a student, we experienced many problems. We were detained at our school, we were sjambokked [whipped] by the police ... We arranged marches and presented memorandums so that some of our students should be released so that [they could] write exams. Because those who were arrested were not charged, they were just detained indefinitely. That is why there was a lot of conflict in the East Rand ... When we were studying at school, you would find soldiers in your classroom. That is one of the things which we wanted to stop.

Intimidation of families

71 The childhood of the children of activists was often filled with fear of police intimidation and violence. Ms Nolita Nkomo was born in February 1970. Most of her recollections of her early teenage years are of threats and intimidation, especially when members of the security forces bombed her family home. By the time she was sixteen years old, her house had been bombed three times. Threatening telephone calls were a regular part of home life. The family experienced many

sleepless nights – lying awake in a state of tension after being told, repeatedly, that none of them would see the next day dawn.

- 72 Ms Nomakhwezi Gcina, the daughter of Eastern Cape activist Ms Ivy Gcina, spoke of the difficulties and stresses of growing up as a child in an activist home:

I've led a very difficult life starting in 1977, when Samora, our eldest, left this world. We'd be sleeping at night and the police would come kicking the doors down, wanting to know where my brother was and beating us up. They would burn our house down, arrest my mother and we would be left without a mother. In 1980, Msimasi left and even [then] they would wake us up in the middle of the night beating us, wanting to know where our brothers were. I think the most difficult time in my life was in 1982 when we also lost my third brother who was in exile and only two of us were left.

In 1982, when my brother was eleven years old, both my mother and father were arrested and the two of us were left alone in the house. They were arrested under section 29 and we could not even visit them; even our pastor could not visit them. We were treated like animals, my brother who was eleven years old and myself. Nobody was visiting us and even members of our extended family isolated us.

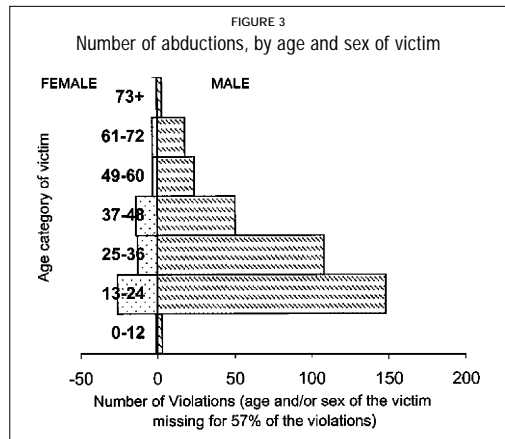
As my parents were still in detention the police came [in the] early hours of the morning (but fortunately there was a lady who came to spend the night with us) and they kicked the doors down as usual. They never knocked; they just kicked the doors down. That was the norm. They asked Mzokolo where our relatives were and he said he did not know; he only knew where our parents and siblings were. He was wearing short pyjamas and they beat him up and took him with [them] in a very harsh manner. We were left behind and didn't know what to do.

He came back the next day at two o'clock. He was swollen and he couldn't even see. He also passed away.

In 1985 up to 1989, giving a summary, my mother was arrested and put in detention for four years but no charges were laid. I lived with my father.

Abduction

73 The extent to which violations were perpetrated against the young is again revealed in the data on abduction. The majority of those who were abducted were young males between the ages of 13 and 24. In the case of women, young rather than older women experienced this violation.

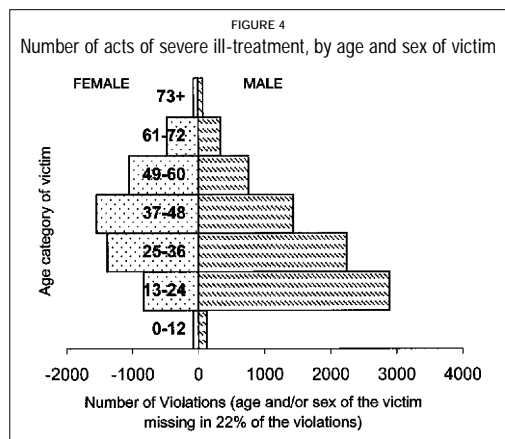


74 Ms Florence Madodi Nkosi, who testified at the Mmabatho hearings, was a victim both of abduction by vigilantes and of police abuse. On 24 November 1985, after attending a meeting of the ANC Youth League, a group called the *Inkathas* or A-team, which was working with the police, abducted her. She was taken to a shop in Huhudi.

They caught us and they put us into a shop and started assaulting us with sjamboks and knobkieries¹⁵. They hit me a lot on my head. Every time I would touch my head, it would be soft. They hit me until I could not feel the pain anymore.

Severe ill treatment

75 Young males between the ages of thirteen and twenty-four reported the highest incidence of severe ill treatment of all age categories. Among females, women between thirty-seven and forty-eight years of age were most commonly the victims of severe ill treatment.



¹⁵ A *sjambok* is a whip; a *knobkierie* is a club.

Children and youth in exile

- 76 In the face of mounting repression, many young people or their family members left the country to reside in other countries or to join liberation movements.
- 77 Exile is often experienced as a brutal rupture in an individual's personal history, resulting in a lack of continuity that frequently becomes a serious obstacle to the development of a meaningful and positive sense of identity. It has been argued that political repression and exile tend to distort normal socialisation in a child or young person. Some of the significant consequences of life in exile include a feeling of 'transitoriness', a profound sense of loss of security, feelings of guilt, and a range of more severe psychological problems and disorders.
- 78 At the Eastern Cape hearings, evidence was presented about the impact of exile on children and young people. Professor Mbulelo Mzamane, founder member of the South African Refugee Committee and himself exiled as a child, testified about the experiences of young people in exile. He identified three key periods during which South Africans were driven into exile: the Sharpsville generation, the Soweto generation, and the post-1984 (UDF) generation.
- 79 Professor Mzamane described the trauma of escape. He recalled the experience of receiving 'Queenie', a girl of eight years of age, who had walked over the border under the cover of darkness. On arrival, she was detained by the Botswana authorities as part of the normal procedure for the reception of exiles.
- 80 Inadequate shelter, hunger and the ever-present threat of kidnapping by the South African state were the daily realities of children in exile in frontline states, including Botswana, Lesotho and Swaziland.¹⁶
- 81 One of the leaders of the Soweto uprising of June 16, Tsietsi Mashinini survived no less than three kidnap attempts whilst living in Gaberone in Botswana until it was felt necessary that he should leave Botswana to go where it would not be possible to have him kidnapped. He eventually fled to Liberia where he subsequently died.
- 82 The exodus resulted in the breakdown of family units and the severing of links with extended families, with traumatic effects on the lives of many young people. Exiled children often grew up without their parents or primary care givers. They

¹⁶ The United Nations Commission for Refugees (UNHCR) made a monthly payment of R30 per exile in Africa. This was inadequate even for food needs.

were unable to contact family and friends in South Africa because of the risk of reprisals against their loved ones in South Africa. The conditions to which they were subjected included exposure to disease and hunger. Some were unable to hold onto clearly defined identities, partly because of the ruptures between them, their kin and their homeland.

- 83 It is not clear how many young people and members of their families died in exile, either as combatant members of the liberation movements, or because of natural or other causes. Some died as a result of cross-border raids into neighbouring countries.

■ CONSEQUENCES OF APARTHEID AND GROSS HUMAN RIGHTS VIOLATIONS

The impact of apartheid on children and youth

- 84 South African children were exposed to countless horrors and suffered considerable trauma because of apartheid. Their role and involvement in the resistance struggle placed them on the firing line. The Commission's documentation shows that children and youth were the dominant victims in all categories of gross human rights violations described in the Act. For almost every adult that was violated, probably two or more children or young people suffered. Children and young people were killed, tortured, maimed, detained, interrogated, abducted, harassed, displaced as well as being witnesses to these abuses.
- 85 Children growing up in extremely violent situations are frequently deprived of the structural support that allows for their meaningful experience of social and cultural life; the fabric of their societies and institutions is affected. For many South African children, family and friendship support networks were shattered by the policies of apartheid. Family life was often damaged, making it difficult for parents to take care of their children and to be emotionally available to listen to them.¹⁷ Many children became alienated from their parents and the trust, faith and communication that should have existed between the generations was sorely tried.
- 86 When considering the experiences of children under apartheid, it is important to remember that the Act provided for victims of defined gross human rights violations to testify and make statements to the Commission. This chapter therefore concerns the statements and testimonies of deponents who were defined as victims in terms of the legislation. This focus on victims is not, however, intended to diminish the active role of children and youth. Children were agents of social change and

¹⁷ Presentation by Ann McKay at the hearing on Children and Youth, Durban, 14 May 1997.

harnessed vast amounts of energy, courage and resilience during the apartheid era. For many young people, active engagement in political activity resulted in the acquisition of skills such as analysis, mobilisation and strategising, as well as the ability to draw strength from friends and comrades in times of hardship. Many of today's leaders come from a politically active history and have displayed a remarkable capacity for forgiveness and reconciliation.

- 87 The majority of people who came to the hearings spoke of experiences of extreme hardship, pain and suffering, whilst also providing testimony of the bravery and enthusiasm of young people. The Commission provided a process through which some of the hurt that many people had been carrying silently for years could be released. Thus, while recognising the largely positive role that children and youth played in the liberation of South Africa, many of the testimonies and statements refer only to the generally negative consequences of repression in the period under review.

Psychological effects of exposure to gross human rights violations

- 88 Political and community violence characteristically expose children and adolescents to suffering long after the event. Whilst many are able to recover with the support of friends, family and community; others may suffer lasting psychological damage. Young people may suffer from concomitant conditions similar to those of adults – including post-traumatic stress disorder, depression, substance abuse and anti-social behaviour.¹⁸ Spraker and Dawes have reported significant depression, anxiety, post-traumatic stress disorder and psychosomatic symptoms at levels that impaired everyday function in South African youth.¹⁹
- 89 Whilst the Commission did not embark on psychological evaluations of people who made statements or gave testimony, deponents themselves often referred to the damaging psychological effects of gross human rights violations. Dee Dicks, who testified at the hearing in Athlone, was arrested and charged with public violence at the age of seventeen. She described her pain in her testimony to the Commission:

I am not in control of my crying and ... my self esteem and confidence is very low at present and it is very difficult for me. And sometimes I am still directionless and unfocused which is always like, you know, the experience that I lived through in the 1980s is like forever in my mind. And it has become quite difficult for me to cope and it is making me very angry, because at that time I could and now I cannot.

¹⁸ See chapter on *Consequences of Gross Human Rights Violations* for more detail on psychological consequences

¹⁹ Pynoos R, D Kinzie & M Gordon (1998) 'Children, Adolescents and Families exposed to torture and related trauma', in [National Institute for Mental Health](#).

- 90 Children may feel hatred, bitterness and fear towards society and institutions that represent authority, such as the security forces. A fifteen year old girl from the South Coast in Natal saw a policeman force a child to hold a bomb which subsequently exploded in her hands, tearing her to pieces.

*I still have distrust for the police ... I blame the police for the disruptions in our schools. I still harbour hatred and fear for those who have committed these acts.*²⁰

- 91 Children who have been continuously exposed to violence may experience a significant change in their beliefs and attitudes. Loss of trust may occur where children have been attacked or abused by people they previously considered as neighbours or friends.²¹ Fear, hatred and bitterness may be the greater, therefore, in cases of inter- or intra-community violence where children not only know who the perpetrators are, but are forced to live in the same community as them, despite feelings of simmering rage. A thirteen year old girl from KwaZulu-Natal recounted what happened to her when she was only six years of age:

Me and my family lived in Bethany and that was a mostly IFP area, and we were all expected to be IFP members. My family and I were ANC members and, as a result of that, we had to leave Bethany to go to Emavuleni ...

*One fateful afternoon in 1992 my father was forcibly taken from our home by people known to us. ... That night my younger brother, my mum and myself went into the forest looking for our father, and then what I saw that night I have been carrying around with me ever since. My father had bullet and stab wounds all over his body and, since that day, I vowed to revenge my father's death.*²²

- 92 The loss of those aspects of childhood that many people assume that children should enjoy was illustrated in the testimony of Ms Sandra Adonis. She said:

It is only now that I realise that I have - I do not know what it is to go to a bioscope [cinema] on a Saturday afternoon or even to a disco like many young people do today or maybe that time as well. I mean, I never had friends really. My friends, my compadres were my comrades. Those were the only people that I could really trust at that point in time, and sometimes you were not even sure if you could trust them.

20 Presentation by Dominic Msomi and Moses Pitso at the hearing on Children and Youth, 14 May 1997.

21 UNICEF, 'The Impact of Armed Conflict on Children', Report of Graça Machel, Expert of the Secretary-General of the United Nations. Selected Highlights. New York 1996

22 Presentation by Dominic Msomi and Moses Pitso, hearings on Children and Youth, 14 May 1997

- 93 Children and youth who are constantly exposed to violence as a form of assertiveness and conflict resolution may perceive violence as the only option available for resolving disputes. Mr Maxlesi of the Eastern Cape Provincial Youth Commission described the negative effects of this on the psyche of the youth:

The methods of confrontation damaged the minds of the youth of our country from both sides of the racial and ethnic divide. The country as a whole has a responsibility of killing violence as an entrenched means of solving problems.

- 94 He elaborated on the effects of militarisation on the youth saying, “youth are products of the highly militarised confrontational past of South Africa and many of them are wearing serious psychological scars.” This includes the militarisation of white youth through conscription to the army and of black youth recruited into MK and, especially, through the formation of SDUs and SPUs (self-defence and special protection units).
- 95 For many white youth who were conscripted into the Defence Force, the nature of the war had varied psychological effects. Guerrilla warfare was attended by many stresses, especially for people from urban areas who were suddenly confronted with the reality of fighting a bush war. These experiences were compounded by the physical brutality to which they were subjected during their basic military training – which itself resulted in numbers of deaths. Others were engaged in violence and repression as conscripts in the townships. Many of these former combatants have since displayed symptoms of post-traumatic stress disorder.²³
- 96 Child soldiers and activists who were exposed to or involved in extensive acts of violence may have become desensitised to suffering. Many have been deprived of opportunities for physical, emotional and intellectual development. After the conflict was over, it was difficult to take up life as it was before, especially where there was a lack of education, training, decent living conditions and jobs. Effective social reintegration depends on support from families and communities.

Disillusionment

- 97 Most activists anticipated the risks of incarceration, detention and torture and were thus better placed to deal with the emotional consequences of suffering than were those who had not been inducted into political resistance. Many who were activists in their youth have had to struggle with a sense that their active participation and sacrifice resulted in practical and material losses – especially through missed educational opportunities. For many, the new South Africa has not proved to be the land of

²³ Presentation by Gary Koen, at the special hearing on Compulsory Military Service, 23 July 1997.

opportunity that they expected and this has generated deep seated feelings of resentment. Sandra Adonis expressed it thus:

My life is messed up as it is, directionless. I mean, I have lost my education and I have lost my childhood, although we have in return received our freedom and our democracy in this country. But to what extent did we, as the comrades, members of the Bonteheuwel Military Wing gain? I do not think we have gained anything because we are still in the same position as we used to be - unemployed, homeless, abandoned. And there is nobody that looks back and says, well, these are the people that have fought the struggle, that has been part and parcel of the struggle and has brought us to the point where we are now. Not any recognition.

- 98 For youth who were not politically active and who were randomly arrested or injured, the psychological damage may have been more severe. Children of random violence often experience a sense of bewilderment, loss and confusion. This is reflected in the case of Mr Vuyani Mbewu who, at the age of fourteen, was caught in the crossfire between police and boycotting students near Manenberg in Cape Town. Vuyani was permanently blinded as a result of the police attack. He said:

Since I realised that I had lost my eyesight, I have never been confident again ... My presence here today is, if nothing else, the uselessness for which I lost my eyesight.

Physical consequences of gross human rights violations

- 99 Psychological, social and economic stresses are compounded when children are faced with physical danger from and abuse by the authorities that are meant to protect them. Not only were child protection laws ignored, but the authorities systematically attacked children, resulting in grave emotional and physical harm. Mr Maxlesi described the persistent physical reminders of a violent history:

It was in these struggles where we saw the brutality of the regime. Hundreds of our students were detained and tortured and others severely beaten. You can see the scars of sjamboks on their faces. Even today, others are semi- and permanently disabled because of the bullet wounds they suffered. In other cases, some of our fellow students were brutally killed.

100 In 1986, Mr Potwalo Saboshego was arrested and assaulted by police (see above):

For the whole day, I was being kicked. Late, at six o'clock, they injured my right eye ... They tied me on a tree, continuing with the assault and they were drinking until late at night and took me back to the police station.

101 Despite repeated requests to see a doctor, he was allowed medical attention only four days later when he was released on bail. Potwalo's torture resulted in the loss of sight in his right eye. His life has been fundamentally altered; he has not been able to secure employment or continue with his studies.

My feelings about the past is I am worried because they've made me lose my dignity. I don't see myself as a complete person as like before and I feel humiliated again, because [of] those people who assaulted me. I did open a case against them, but nothing has happened thus far ... That wound is still there because those policemen were just left.

102 Mr Bhekithemba Mbanjwa was seventeen when he was attacked in Epatheni in KwaZulu-Natal. Although not politically affiliated to any particular organisation, he was caught in the crossfire while delivering some maize meal to his mother. In the shooting incident that arose out of ANC/IFP conflict, he lost his leg. Consequently, he lost his job and his dream of becoming a soccer star one day.

103 Children who are physically injured, especially if the injury results in permanent disability, suffer extreme stress as they attempt to reconstruct their identity and come to terms with the disfigurement or disability.

Disruptions to education

104 The quest by the oppressed majority for a proper education has been a theme that has dominated South African resistance. According to Professor Mzamane: "The deprivation of one's opportunity to develop one's mind must surely rank as one of the most evil conceptions of apartheid." Children and youth, although they valued education and acknowledged the difficulties of advancing their careers without certificates, were prepared to sacrifice their education by joining liberation movements and participating in mass mobilisation under the slogan of 'liberation before education'.

105 Mr Maxlesi described the effects of apartheid education on the youth:

The unjust education system resulted in many of our fellow students leaving school to join the work force and others leaving the country to join the liberation movement in exile. The culture of learning and teaching was reduced to non-existence by the regime ... The absence of educational and recreational facilities in our schools and communities affected our academic achievements and growth development as young people.

- 106 The education of many children was disrupted because they were forced into underground activities, had to sleep away from home to evade arrest or were detained. Children placed under house arrest or restriction orders were socially isolated and the required daily reports to the police station interfered with their studies or their ability to earn a living.
- 107 Children suffering from psychological problems because of violations may display symptoms of lack of concentration, sleeplessness, nightmares, headaches and depression that can impair their ability to study. Figures from the Commission's database provide some support for this assertion.²⁴ Fifty-seven per cent of those who reported a disruption to their education also reported that they were suffering from psychological problems of anxiety, depression and an inability to cope. Although it is not possible to draw a linear conclusion between the two, it does suggest that psychological problems may interfere with educational pursuits.
- 108 Disruption of education compromised the future potential of many children. Such disruptions were exacerbated by the negative economic effects that gross human rights violations have been reported to have on families. Of those statements in which parents reported a disruption to their children's education, 51 per cent also referred to losses of income as an outcome of violations.
- 109 Intra-community violence, which led to the displacement and homelessness of many children, had dire consequences on their education. Of the statements that reported disruptions in education, 34 per cent reported that the violation was a result of intra-community violence. A further 29 per cent were homeless.

Dislocation and displacement

- 110 Large numbers of children, particularly in KwaZulu-Natal, were displaced or ran away from their homes to avoid the violence. Many of them have still not returned and others have not been able to find their parents. Many children also suffered

²⁴ These figures are derived from a sample of 10 per cent of the statements received by the Commission. The sample was randomly selected on a proportional basis of violations reported per region and coded according to expectations and reported outcomes of the violations experienced.

the trauma of watching their homes being burnt down and their parents being taken away. Others were left with the burden of having to take care of siblings when both parents were killed or detained.

- 111 Being forced into hiding and exile disrupted children's lives. As internal refugees, children led nomadic lives and had limited contact with their families. Mr Reginald Wonder Nkomo became an internal refugee. In 1991, at seventeen years of age, he was forced to leave his home in KwaNdengezi in KwaZulu-Natal. He described his experiences at the Commission's hearings in Durban:

We left the township in 1990 because we were experiencing conflict and some of our brothers had died. Therefore, we decided to leave and go outside. But these people were overpowering us because they were together with the police, therefore we had to spread ourselves around ... We used to mention among ourselves that if you wished to go back home to visit your parents you can do that at your own risk ... One day I took a risk to visit my parents, because it was after a long time and I was missing my grandmother, because she was the one who brought me up ... All I remember is that they shot at me.

- 112 Wonder was shot in the leg. He was taken to the police station and tortured. He has subsequently been in and out of hospital for the past seven years and requested that the Commission assist in arranging a consultation with a specialist. He lamented his lost opportunities:

I left school in standard six because of the violence. Like as I have said that we couldn't stay in our homes, we had to run to the mountains and hills ... I don't know what to do, and time has run out. But I would also like to go back to school but [cannot] because of my condition and the problems I am facing as one person who is always in and out in hospital.

- 113 Wonder's case reflects the complex and multiple layers of abuse and human rights violations suffered by South Africa's youth. Wonder's education was disrupted prematurely. He was forced to leave his family, which he missed so much that he risked his life to see them again. This led to his being shot, detained and tortured – another trauma added to others he had experienced, such as the loss of his friends and relatives in the conflict. The constant pain of his wounded leg was a nagging reminder of the losses and suffering he had to endure. The cost of his sacrifice was exacerbated through comparison with his brother who completed his secondary education and was pursuing tertiary training.

114 The effects of displacement and homelessness are evident in figures from the Commission's database. In KwaZulu-Natal, 26 per cent of those who made statements to the Commission said that, because of the violations inflicted on them, they were left homeless and 14 per cent were forced to move away. These figures are almost three times greater than those reported from other provinces. Sixty per cent of those who were left homeless reported intra-community violence as the cause. The problem of displacement was overwhelmingly predominant in KwaZulu-Natal.

Exile

115 Children in exile face many challenges, including adaptation to a new environment and loss of contact with kin and social support networks. They often experience feelings of transitoriness, loss of security and disruption that can lead to a sense of limbo and insecurity. South African children who were in exile in neighbouring countries were also faced with the ever-present threat of being kidnapped or killed in cross-border raids.

116 Some white youth chose to leave the country rather than serve in the defence force. This resulted in numerous traumas associated with exile. Mr Roger Fields reported that, in London, in the four years from 1985-1989, one youth committed suicide and six others were hospitalised for nervous breakdowns because of their exile.²⁵ The breakdown of family units and broken connections with extended families caused by the exodus affected the lives of many young people.

Concluding remarks

117 Those who grew up under conditions of violence will carry traces of their experiences into adulthood. Many have suffered the loss of loved ones. Many carry physical and psychological scars. The life opportunities of many have been compromised through disruptions to their education. Some have transplanted the skills learnt during the times of political violence into criminal violence, as they strive to endure ongoing poverty. However, perhaps the most disturbing and dangerous aspect of this legacy for the future of the nation is the fact that those who sought to transform the country, and in the process gave up so much, see so little change in their immediate circumstances.

118 The period of struggle also, however, nurtured resilience, wisdom, leadership and tolerance. Many young people rose above the suffering they experienced.

²⁵ Presentation by Roger Fields at the special hearing on Compulsory Military Service (Conscription), 23 July 1997.

Some defiantly and bravely saw themselves as fighting for the freedom of their people – sacrificing education and opportunities for self-improvement and joining liberation armies and resistance movements.

- 119 Many of these young people have become men and women of extraordinary calibre. Despite their suffering, they have shown extraordinary generosity and tolerance and have reached out to their former oppressors in a spirit of reconciliation.

■ APPENDIX

THE BONTEHEUWEL MILITARY WING

- 1 Bonteheuwel is a coloured township situated north of Cape Town. It was created in the 1960s as a repository for coloured people who had been forced to move out of Cape Town as a result of the Group Areas Act. By the mid-1980s, it had become a site both of student political activism and very high crime rates.
- 2 In 1984, the Bonteheuwel Inter-Schools Congress (BISCO) was formed to co-ordinate the activities of the various student representative councils (SRCs) which were rallying around issues of inequalities in apartheid schooling and the repression of legitimate political protest. BISCO became the target of security force repression and, in October 1985, along with 101 other organisations, was prohibited from organising or holding any gatherings. A number of BISCO leaders, including Ashley Kriel and Gary Holtzman, were detained and subsequently went into hiding.
- 3 It was in this context that the “formation of a militant body to co-ordinate and intensify revolutionary activities, especially at the Bonteheuwel High Schools”¹ was conceived by BISCO members. At a meeting in 1985, it was decided to form a structure that would protect the community of Bonteheuwel, render Bonteheuwel ungovernable and ‘hit out’ against any organ of the state. This structure became the Bonteheuwel Military Wing (BMW). The vast majority of its active members were students between the ages of fourteen and eighteen years of age.
- 4 While the formation of the BMW was not part of the strategic plan of the United Democratic Front (UDF) in the Western Cape, its emergence was welcomed and endorsed by the organisation. Desmond Grootboom, former UDF chairperson of the Bonteheuwel area committee, said:

We were very aware and conscious of the BMW. We obviously approved... The BMW was very much part of the struggle family... there was an understanding that they fell under the political leadership of the UDF. However, it was not a situation of command control.²

- 5 In time, however, the BMW became increasingly independent, operating as a paramilitary organisation outside the formal discipline of the UDF. The relationship

1 Submission by Joseph Aranus.

2 Interview by Yazir Henry with Desmond Grootboom.

between the UDF and the BMW became strained as ideologies and *modus operandi* diverged.

- 6 In addition to links with the UDF, the BMW developed very close alliances with the African National Congress (ANC) and Umkhonto weSizwe (MK). A number of young BMW members were recruited into MK and underwent military training either outside South Africa or within existing MK cells in the Western Cape. Most of this training took the form of short 'crash courses' in the use of arms and explosives. Those who attended the courses were afterwards expected to return to the BMW and pass on their training to others. The BMW was armed from a number of sources, including arms stolen from policemen, bought from local gangsters, supplied by MK operatives in South Africa or smuggled into the country by BMW members returning from training in exile. Weapons ranged from homemade 'zipguns' to hand grenades and rocket launchers.
- 7 The BMW launched a number of operations, including attacks on vehicles belonging mainly to the state and private companies, attacks on security force personnel and attacks on installations such as police stations, post offices and railway stations. In the course of these attacks, a number of individuals were seriously injured or killed.
- 8 Eventually, the BMW acquired a reputation that made it the focus of security force attention: "*Hierdie aktiewiste leiers is die kern van die probleem en hul verwydering is noodsaaklik*".³ (These activist leaders are the core of the problem and their removal is essential.) In 1986, a number of special unrest investigation units were set up to address the 'unrest' problems in the Western Cape; the Athlone unit was responsible for infiltrating and halting the activities of the BMW.
- 9 Between June 1987 and January 1988, members of the special unit detained over forty BMW members. The police had instructions to obtain, as quickly as possible, confessions that would lead to more arrests and convictions.

*"Die nodige beëdigde verklarings moet, soos vereis, so spoedig moontlik maar in elk geval binne agt en veertig uur, beskikbaar wees vir die teenstaan van moontlike interdikte."*⁴ *(The necessary sworn affidavits must, as demanded, be available as quickly as possible, but always within forty-eight hours, to oppose possible interdicts). "Ondervraging moet intensief en doelmatig onderneem*

³ Minutes of a Western Province Joint Management Council daily management meeting, 16 May 1986 (WPGBS/22/7/3/2)

⁴ Directive from Commissioner of Police, entitled 'GVS opdrag en riglyne vir beplanning en optredes vir bekamping van die onlussituasie in die RSA', dated 5 June 1986.

*word onder andere om ander arrestasies en aanhoudings te bewerkstellig.⁵
(Interrogation must be undertaken in an intensive, goal-oriented manner to
facilitate, amongst other things, further arrests and detentions).*

- 10 These orders were brutally put into operation. Those arrested were subjected to protracted and severe torture. Methods used to extract 'confessions' included electric shocks, suffocation with a wet bag, severe physical assault and being deprived of food and water. Some BMW members recall being forced to drink water from the toilet bowl to quench their thirst. Perhaps the most disturbing aspect of the torture, however, was the systematic sexual abuse to which these youngsters were subjected. This included being sodomised with the barrel of a revolver and a baton. Activists were deliberately placed in cells with hardened criminals and gangsters who repeatedly raped them. Jacques Adonis was thrown into a cell with common law criminals who were told "*Maak met hom wat jy wil.*"⁶ (Do what you want to him). Those members of the BMW who made statements to the Commission were between fourteen and twenty-one years old at the time of their detention and torture.

- 11 The consequences of participating in the violent activities of the BMW – prolonged detention, brutal torture and imprisonment with common criminals – will be felt by the individuals concerned, their families and friends and the community of Bonteheuwel for decades. Those BMW members who came to the Commission all displayed symptoms of post-traumatic stress disorder. They reported similar symptoms in comrades who chose not to approach the Commission. Most had to discontinue their education and many had not been able to resume it. Because of this, they are unemployed or have low-skill, low-wage jobs. Some have turned to drugs and alcohol to obliterate their painful memories. Others have transferred their 'skills' of violence and armed conflict to gangsterism. Violence against family members is not uncommon, and many find long-term, trusting relationships impossible to sustain.

- 12 BMW members were teenagers in the 1980s; at the time of the Commission hearing, they were only in their twenties. They should have been involved in studies, work, friendships and establishing families. The fact that so many of them remained unable to function adequately can be attributed to the unstable and violent life they led as BMW members, and to the extreme forces of torture and abuse they experienced at the hands of the security forces. In addition, the UDF and the ANC supported and encouraged these young children, aged between eleven and eighteen years,

⁵ *Ibid.*

⁶ Statement to the Commission by Sandra Adonis

to participate in organised violence, without preparing them for the consequences of such actions.

After the unbanning of the ANC, they (the BMW members) were left to their own devices. As things simmered down, they found themselves naked and vulnerable, lost and exposed, without direction. These guys were literally born on the streets, born in the eye of the storm. They did not have a history before 1986. They had little schooling or skills, except in zipguns and petrol bombs. They were the shocktroops.⁷

I felt that the true purpose of the severe police interrogation was to break us mentally, to ensure that we were not able to function normally again. I could say that the cops succeeded in their interrogation, because if I look at the guys now...⁸

⁷ Interview by Yazir Henry with Desmond Grootboom.

⁸ Statement by Faried Ferhelst, former member of BMW Command Structure.

Special Hearing: Women

■ HOW THE GENDER HEARINGS CAME ABOUT

- 1 In March 1996, as the Commission commenced its hearings, the Centre for Applied Legal Studies (CALS) at the University of the Witwatersrand hosted a workshop entitled 'Gender and the Truth and Reconciliation Commission'. Participants included psychologists, lawyers, people from non-governmental organisations (NGOs), members of the Gauteng Legislature and representatives from each of the four regions of the Commission. The workshop resulted in an in-depth submission that discussed ways in which the Commission might be missing some of the truth through a lack of sensitivity to gender issues. The submission, as well as relying on discussion at the workshop, used material from in-depth interviews with women leaders who had suffered gross human rights violations.
- 2 The term 'gender' encompasses both women and men, and the social relations between them. The CALS submission unashamedly focused on women in the belief that it is the voices of women that more often go unheard. Further, while much of their discussion dealt with gross human rights violations as defined by the Commission, the submission also devoted some time to questioning the way gross human rights violations were understood, thereby masking the types of violations more commonly suffered by women.
- 3 Ms Cheryl de la Rey, addressing the Cape Town special hearings, noted that "(t)oo often when we do not undertake specific actions to draw attention to the issues that affect women, what happens is that men and the experiences of men become the yardstick by which judgements are made". The argument that apparently gender-neutral approaches are often discriminatory because they unwittingly assume a male outlook is in accordance with the conception of equality found in the South African Constitution. This conception is one of substantive, rather than merely formal, equality. It recognises indirect as well as direct discrimination, implicit as well as explicit and intentional bias.
- 4 The Commission took up the challenge of the CALS submission. It organised two workshops to which it invited representatives of women's organisations and

the media. Participants discussed how they could attempt to bring more women into the Commission process. The Commission also agreed to the proposal for special women's hearings. Three women's hearings were subsequently held – in Cape Town, Durban and Johannesburg. It should be noted that the absence of a special hearing in the Eastern Cape could, in itself, distort the picture as the Eastern Cape is known as an area in which treatment in prison was particularly brutal. The testimony of Ms Zubeida Jaffer (referred to below) about her torture while held in Eastern Cape prisons is illustrative.

- 5 The Commission also attempted to amend its procedures in ways that would encourage women to speak. By April 1997, the form used by the Commission to record statements had been refined (Version 5) and included the following cautionary note:

IMPORTANT: Some women testify about violations of human rights that happened to family members or friends, but they have also suffered abuses. Don't forget to tell us what happened to you yourself if you were the victim of a gross human rights abuse.

- 6 This chapter of the report focuses primarily on what was revealed during the special women's hearings. Women were by no means absent from other hearings of the Commission. Indeed, the CALS submission acknowledged that they were alerted to gender bias when they noticed that over half of those who spoke were women, but that the roles and capacities in which women and men spoke differed. They saw that, while the overwhelming majority of women spoke as relatives and dependants of those (mainly males) who had directly suffered human rights violations, most of the men spoke as direct victims. The figures below confirm that this pattern persisted over the full period of the hearings.
- 7 Over the life of the Commission, commissioners distinguished less and less between what were originally perceived as 'primary' and 'secondary' victims. They acknowledged the difficulty of distinguishing between, or weighting, the physical and psychological pain suffered by the direct victim and the psychological pain of those to whom this person was precious. The CALS submission elaborated on other types of pain and suffering, such as when a family loses a breadwinner and the loss of status of a woman who is widowed when her husband is killed. It quotes Ms Seipati Mlangeni, widow of Mr Bheki Mlangeni, widowed two months after her marriage: "I am an outcast in my own society"¹.

¹ Goldblatt B and S Meintjes (1996), 'Gender and the Truth Commission. Submission to the Commission', page 29.

- 8 During the special women's hearings, the testimony of Ms Agnes Gounden emphasised how easy it was for a 'secondary' victim to become a direct target. Ms Gounden was resting at home, medicated, trying to get over the death of her only sister a few days earlier at the hands of the police, when the police arrived to demand a statement.

They said to my mother, that if this child is drunk like this again tomorrow, you'll see what we will do to you. So can you imagine the fear that we felt.

- 9 Most of those who spoke at the special hearings spoke of their experience as direct victims. This chapter, in focusing on their stories, underlines the fact that there were many women who suffered from the full range of abuses which fell within the Commission's understanding of its ambit. It also, however, points out the particular ways in which these women might have experienced abuses. At the level of biology, it points to sexual abuses and threats. At a broader level, it looks at how gendered roles affected the experience and its aftermath.
- 10 This short chapter cannot hope to do justice to the testimonies heard. It can do no more than give a flavour of what was said. It will, however, attempt to give an idea of the range of roles in which women were revealed, and in particular, the ways in which their experiences might have differed from those of men.
- 11 The chapter commences by presenting gender-disaggregated statistics culled from the database of the Commission. It follows with general discussion as to how the outlook of the Commission might have affected what was heard, given the gendered roles and socialisation within the society. It looks at the nature of possible 'silences'. Against this background, the chapter then presents some of the stories related in the special hearings or recorded in the submissions. These provide some idea of the range of sexual, physical and psychological abuses experienced by women. While most of the stories focused on experiences while in detention, one section looks specifically at abuses suffered by women outside of prison. The penultimate section looks at relationships, a theme that emerged strongly when women discussed all forms of abuse. The final section looks at women as perpetrators.

■ THE STATISTICS

- 12 Table 1 below shows that, overall, somewhat over half of all deponents to the Commission were women. The pattern varied geographically, ranging from four in every ten deponents in Cape Town to three-quarters of deponents in Durban, the centre with by far the largest number of deponents.

Table 1:

Statements describing gross violation of human rights by sex of deponent

OFFICE	WOMEN	MEN	UNSPECIFIED	TOTAL	% WOMEN WHERE SEX KNOWN
Cape Town	593	866	78	1537	40.6
Durban	5945	3050	432	9427	66.1
East London	1181	1495	51	2727	44.1
Johannesburg	2634	2877	17	5528	47.8
Grand Total	10353	8288	578	19219	55.5

- 13 Table 2 records only those deponents who reported violations of which they themselves were victims. Here the overall percentage falls to 43,9 per cent, suggesting that men were more likely than women to talk about their own experiences as direct victims. Durban again accounted for the highest proportion of female victims, and in this centre women were somewhat more likely than men to present themselves as the direct victims.

Table 2:

Deponents who were themselves victims of gross human rights violations

Office	Women	Men	Unspecified	Total	% women
Cape Town	229	715	55	999	24.3
Durban	3523	2373	320	6216	59.8
East London	386	1227	30	1643	23.9
Johannesburg	991	2242	9	3242	30.7
Total	5129	6557	414	12100	43.9

14 Table 3 breaks down the violations into four broad categories of attempted killing, killing, severe ill treatment and torture. The first column provides the percentage of reports of this category reported by women. It shows, for example, that while, overall, women accounted for 70 per cent of reports of killings, they accounted for only 19 per cent of reports of torture. The second column indicates the percentage of women's reports of this category where the woman said she herself was the victim. Here women are seen to be most likely to present themselves as victims of severe ill treatment. The third column gives the percentage of all reports (with known sex) of self as victim where the deponent was a woman. Women are again under-represented among those reporting torture. The fourth column indicates, for each centre, what proportion of primary victim women deponents reported each of the four categories. This column reveals that, overall, a full 8 per cent of women deponents who were themselves victims, spoke about severe ill treatment.

Table 3:

Women's reports of gross human rights violations by type of violation

		% REPORTS	SELF VICTIM/ WOMEN	WOMAN SELF VICTIM/ ALL SELF	TYPE/ WOMEN/S REPORTS
Cape Town	Attempt to kill	33%	37%	21%	4%
	Killing	61%	0%		0%
	Severe ill treatment	30%	55%	22%	80%
	Torture	14%	69%	11%	16%
	TOTAL	33%	36%	19%	100%
Durban	Attempt to kill	54%	42%	39%	3%
	Killing	73%	0%		0%
	Severe ill treatment	62%	66%	58%	96%
	Torture	16%	45%	9%	1%
	TOTAL	63%	40%	54%	100%
East London	Attempt to kill	30%	58%	22%	9%
	Killing	72%	0%		0%
	Severe ill treatment	32%	59%	24%	64%
	Torture	22%	56%	15%	27%
	TOTAL	36%	37%	20%	100%

		% REPORTS	SELF VICTIM/ WOMEN	WOMAN SELF VICTIM/ ALL SELF	TYPE/ WOMEN/S REPORTS
Johannesburg	Attempt to kill	45%	54%	36%	11%
	Killing	66%	0%		0%
	Severe ill treatment	34%	54%	28%	67%
	Torture	19%	61%	15%	22%
	TOTAL	39%	31%	24%	100%
All Offices	Attempt to kill	43%	49%	32%	5%
	Killing	70%	0%		0%
	Severe ill treatment	48%	63%	42%	85%
	Torture	19%	58%	14%	9%
	TOTAL	49%	37%	35%	100%

■ THE DEFINITION OF GROSS HUMAN RIGHTS VIOLATIONS

- 15 The Commission went some way towards meeting the criticisms of gender bias. Nonetheless, there were those who argued that it did not go far enough. Activist lawyer Ms Ilse Olckers, describing discussions between two commissioners and women working on gender issues, said it was as if they “were asking them to convince the other members of the Commission to see the earth as round. We added a third dimension to a task already wearisome. A task which they felt they could hardly cope with in its current two dimensional state”.²
- 16 The inclusion of a separate chapter on gender will be understood by some readers as sidelining, rather than mainstreaming, the issue. Women will again be seen as having been portrayed as a ‘special interest group’, rather than as ‘normal’ members of the society.
- 17 To integrate gender fully, however, would have required the Commission to amend its understanding of its mandate and how it defined gross human rights violations. The Act states that

² Olckers, I (1996), ‘Gender-neutral truth — a reality shamefully distorted’, in *Agenda* 31, pp 61-7.

'gross violation of human rights' means the violation of human rights through – (a) the killing, abduction, torture or severe ill treatment of any person; or (b) any attempt, conspiracy, incitement, instigation, command or procurement to commit an act referred to in paragraph (a).

- 18 The CALS submission argued that the definition of 'severe ill treatment' should be interpreted to include apartheid abuses such as forced removals, pass law arrests, alienation of land and breaking up of families. This approach finds support in the declaration to the Commission by five top judges at the legal systems hearing that apartheid was in and of itself a gross violation of human rights.³
- 19 The Commission's relative neglect of the effects of the 'ordinary' workings of apartheid has a gender bias, as well as a racial one. A large number of statistics can be produced to substantiate the fact that women were subject to more restrictions and suffered more in economic terms than did men during the apartheid years. The most direct measure of disadvantage is poverty, and there is a clear link between the distribution of poverty and apartheid policies. Black women, in particular, are disadvantaged, and black women living in former homeland areas remain the most disadvantaged of all. It is also true that this type of abuse affected a far larger number of people, and usually with much longer-term consequences, than the types of violations on which the Commission was mandated to focus its attention.
- 20 The suffering caused by influx control and related laws was not only physical, but attacked the very selfhood of many women and men. In this respect, Goldblatt and Meintjes quote from an interview with Ms Lydia Kompe, formerly a trade unionist and organiser of rural women, and now a parliamentarian. Ms Kompe was forced to use a different name so as to be able to pass for 'coloured' and remain in an urban area:

I had to do away with my own African culture, with my own self and call myself a different thing so that I could come and work, because I was not allowed to work in the so-called proclaimed areas of Johannesburg.⁴

³ This issue is discussed in full in *The Mandate* in Volume One of this report. Also appended to that chapter is a discussion of apartheid as a crime against humanity.

⁴ Goldblatt and Meintjes (1996), page 24.

■ GENDERED ROLES AND SOCIALISATION

- 21 While a person's sex is determined by biology, gender is a social construct. It is determined by the relationships between women and men and by the roles they play. One of the more important divisions in terms of gender analysis is that between the public and private spheres. Men are more commonly 'active' in roles in the public sphere, while women predominate in roles in the private sphere. Politics as usually understood pertains primarily to the public sphere. The public-private distinction played itself out in the Commission hearings to the extent that women were often constructed – and constructed themselves – as wives, mothers, sisters and daughters of the active (mainly male) players on the public political stage.
- 22 In some cases, it was clear that men actively prevented women from engaging in politics. In one of the general hearings, Ms Ncediwe Euphambia Mfeti remarked: "We are not allowed to ask our husbands about politics in my culture". Her observation was confirmed by nods and laughter in the audience. African National Congress (ANC) veteran Mr Govan Mbeki testified that:

*The police were looking for meetings. So when you left you did not tell your wife where you were going, and when you returned ... they were asleep and your food was on the stove... Women created problems for the (liberation) movement because they wanted to know.*⁵

- 23 Ms Sheila Masote, daughter of Pan Africanist Congress (PAC) leader Mr Zeph Mothopeng, said that they had a similar policy that:

women should stay at home, should not participate. It was all by way of trying to say when we go out to jail, when we go out and be killed, you look after the children... The husbands wouldn't share much.

- 24 The statistics on Commission evidence bear out the differential engagement of women and men in 'active' politics. Very early in the process, anthropologist Fiona Ross analysed the 204 testimonies that she heard presented during the first five weeks of Commission hearings. She found that close on six of every ten deponents were women, but that over three-quarters of the women's testimonies and 88 per cent of the men's testimonies were about abuses to men. Only 17 per cent of the women's testimonies and 5 per cent of the men's were about

⁵ Ross, FC (1996), 'Speech and Silence: Women's Testimony in the First Five Weeks of Public Hearings of the South African Truth and Reconciliation Commission', p 22.

abuses to women, with the remainder about abuses to women and men. Ross found that 25 per cent of all cases involved women speaking about their sons, 11 per cent were women speaking about their spouses and 8 per cent were women speaking about their brothers. Only 4 per cent of the cases involved men speaking about sons, and 0 per cent of the cases involved men speaking about either spouses or sisters.

25 Commenting on these figures, Beth Goldblatt writes that they:

reflect the reality that women were less of a direct threat to the apartheid state and were thus less often the victims of murder, abduction and torture. This was due to the nature of the society which was, and is, structured along traditional patriarchal lines. Men were expected to engage with the state in active struggle while women were denied 'active citizenship' because of their location within the private sphere.⁶

26 To the extent that people came to the Commission hoping for compensation, the figures could also reflect the fact that men who were killed or otherwise incapacitated were more likely than women to have been primary breadwinners upon whom whole families were dependent.

27 Other figures provide some support for Goldblatt's assertions. In 1986/7, for example, it was estimated that only 12 per cent of all state of emergency detainees were women. In the Sharpville massacre of March 1960, at the beginning of the period covered by the Commission, fifty-one men were killed, compared to eight women and ten children. Within the armed forces, women accounted for a small minority during the 1960s and 1970s. By the early 1990s, women still accounted for only 14 per cent of the Permanent Force of the South African Defence Force (SADF) and approximately 20 per cent of Umkhonto weSizwe (MK) cadres. Moving away from politics, official figures show that only 13 per cent of all those convicted of crimes between July 1995 and June 1996 were women.

28 One can, however, overstate the case. The hearings provided ample evidence that women fulfilled all roles in the struggle and suffered the full range of human rights violations. There were stories of women active – and abused — in all three decades covered by the Commission. There were stories of and by women of all races and of all ages. In terms of educational level, the women ranged from those with limited formal education to others with tertiary degrees. Ms Lita

⁶ Goldblatt, B (1997), 'Violence, gender and human rights — an examination of South Africa's Truth and Reconciliation Commission' paper presented to the annual meeting of the Law and Society Association, St Louis, Missouri, pp 7-8.

Nombango Mazibuko emphasised the fact that, despite her lack of (formal) education, “the contribution that I’ve put in within the ANC structures is quite massive”. Elsewhere, there is plenty of documentary and other evidence⁷ that women were active before the 1960s – in particular in the memorable 1956 anti-pass march that is today celebrated each year on Women’s Day. There is also plenty of evidence in documents⁸ that women were severely punished – through detention, torture and other means – for their involvement.

- 29 Further, in South Africa, as elsewhere, women’s ‘private’ roles have often been a strong motivating factor in their political engagement. Ms Thandi Modise of MK, for example, has stated emphatically that she was a guerrilla “because I am a mother”. During the women’s hearing, Ms Zodwa Lephina Thobela said that it was when her son was arrested in 1976 that she and her husband became involved in politics and “started being enemies with the security police”. Also at the hearings, Ms Noncebo Zokwe recalled how the security police named her a “Communist mother”. She used her role as mother and protector of the home when a policeman came to her home, telling him: “On these premises I am the government”. When he threatened to kill her, she said: “The only pain I know is the pain of giving birth”. She said: “It is womanhood which brought me this strength”.⁹
- 30 Women’s socialisation and roles could also mean that certain experiences, although seemingly similar, might bear more heavily on women than on men. For example, women’s socialisation, more than that of men, focuses on intimate relationships. Without negating the pain felt by men in solitary confinement, this could make the experience even more painful for women. During the hearings, many women spoke in particular about what it meant to be separated from their children. Ms Evelyn de Bruin of Upington who, together with her husband, spent many long months on death row after being convicted of common purpose simply because they were present at a killing, told how she had to leave her two young children behind. On the basis both of the unfair judgement and the cruelty of separation, she was certain that “Judge Basson will never see the heavens”.
- 31 Some women spoke about how their torturers used the strength of the mother-child bond against them. Ms Albertina Sisulu was told that her child was in intensive care with pneumonia and that, if she did not give a statement, “you won’t bury the child”. Ms Joyce Sikhakhane Ranken feared that she herself would be killed in detention, leaving her three-year-old child an orphan.

7 Walker, C (1991), *Women and Resistance in South Africa*. David Philip Publishers: Cape Town

8 Such as an undated document by the Federation of Transvaal Women, ‘A Woman’s place is in the Struggle, not behind bars!’, Johannesburg.

9 Ross, FC (1996), pp 14-15.

To crown it all, during a torturous interrogation session ... a three year old Afrikaner toddler was brought in to remind me of Nkosinathi.

32 Ms Zubeida Jaffer, in an early stage of pregnancy, was told that she would be assaulted until she lost her baby.

33 Some of the women who had been threatened in this way went on to describe their reasons for resisting. Ms Albertina Sisulu felt "let the child die if the nation is saved". Ms Joyce Sikhakhane Ranken felt "the price to pay ... was worth our cruel separation." Ms Zubeida Jaffer,

didn't want my child to grow up with that burden on her, because ... if she is brought into this world thinking that her mother gave this information so that she could live, that's a heavy burden for a child to carry.

34 There were also many stories about how previously 'apolitical' women became activists because of the abuses suffered by themselves and their families. For example, Ms Nozizwe Madlala told the story of Ms Kubeka. Ms Kubeka's home was twice burnt down during the KwaZulu-Natal violence, while police looked on without intervening. On the second occasion, Ms Madlala was in detention when the arson attack took place. The security police broke the news to her and:

boasted about this evil attack on a woman whose only crime was that she had given birth to children who did not want to stand by and watch while their people were brutalised.

Ms Kubeka ... had no particular interest in politics. Her hands were already full anyway with the burden of scratching a living for herself and her children. It was the brutal experience that turned her into one of the strongest and (most) resilient fighters of our movement.

35 Finally, one can argue that the centrality of women in the struggle depended on the nature of that struggle and the chief protagonists at a particular point. In the 1980s, for example, when much of the activity was undertaken by scholars and students, these young women did not have the same social constraints against engaging in the struggle that might have been felt by slightly older women or those with more family responsibilities. In terms of the public/private distinction, women scholars and students were more firmly located in the public sphere, the sphere in which political action is most explicit, and where it was most likely to provoke state retaliation.

■ SILENCES

- 36 A primary aim of the Commission was to end the silences around the atrocities under apartheid. A primary aim of civil society's intervention around gender was to end the silences around the gendered nature of those atrocities.
- 37 One of the silences was that of women who had themselves suffered gross human rights violations, but spoke only as secondary victims — as relatives of men who had suffered. Hence, for example, in the first week of hearings in the Eastern Cape, the widows of the Cradock Four spoke about their murdered husbands. Each had herself been arrested and harassed, but their own stories did not become the subject of the hearings. Later in the hearings, Dr Liz Floyd and Ms Nyameka Goniwe spoke about the abuses suffered by their partners, Mr Neil Aggett and Mr Matthew Goniwe. They, too, mentioned their own roles and suffering only in passing.
- 38 Several of the women who spoke at the special hearings began their testimony by stating their reluctance to come forward. Some said that they felt their sufferings were less severe than those of many other people. Ms Jubie Mayet, who had been banned and detained, said she was reluctant “because my experiences under the old regime were nothing compared to what so many countless other people suffered.” Ms Nozizwe Madlala, detained for a year in solitary confinement, said that when people ask her if she was tortured, “I usually answer in the negative, for my own experience of torture was much milder than that of many others.”
- 39 At the time the abuses occurred, many women (and men) remained silent about their sufferings. Ms Wilhelmina Cupido, reported that after her sister, Ms Coline William's, detention, Coline “said she just want to go on with her life, she just want to leave it there and carry on.” There could be multiple reasons for this silence — a desire to protect her family, a desire to protect herself by keeping silent about ‘illegal’ activities, and/or a desire to forget a terrible experience.
- 40 Others might have kept silent because they felt there were not ready listeners. Thus Ms Zubeida Jaffer described how most people react:

*They'll smile at me and say: "Oh, you're the journalist, you were detained..."
Then they'll say to me: "But I am sure they never did anything to you". I think it's maybe too much for people to think that things [like this can happen]. I think also because I am a woman there is always the assumption that they wouldn't have touched me ... "[they] didn't really do anything to you, did they?"*

- 41 In opening one of the special hearings, Ms Thenjiwe Mtintso spoke about the difficulties of describing ones suffering in a public arena. Ms Mtintso had previously spoken openly in a face-to-face interview as part of the CALS research. She was not, however, prepared to speak about her personal experiences in the open hearings. She congratulated the women who were prepared to “open those wounds... The personal cost may be high. They may have to go back home and deal with the pain that has opened today.”
- 42 Many claim that, by talking things through, people come to terms with what has happened and the pain is lessened. In opening the Cape Town hearings, Trauma Centre psychologist Ms Nomfundo Walaza questioned this conventional wisdom:

We talk very glibly about the fact that we can show our weaknesses in a way that will render us much more strong later on. Some women are sceptical that the process will uncover the wounds that are healing and render them even more vulnerable that they started off with...

- 43 After hearing Ms Zubeida Jaffer's testimony, Commissioner Mary Burton commented on how someone “who is known as a strong person in the community” had been brave enough to give “a glimpse into a vulnerable side” of herself.

■ SILENCES ABOUT SEXUAL ABUSE

- 44 One of the particularly difficult areas of silence is sexual abuse. The Commission saw its provision of the opportunity “to relate their own accounts” as a way of restoring “the human and civil dignity” of victims. For many women, relating the story of their sexual abuse would in no way serve this purpose. It would, instead, leave them feeling a loss of dignity.
- 45 It is, perhaps, surprising that as many women as did spoke about being raped or otherwise sexually abused. As Ms Jessie Duarte put it, “the Commission is actually asking people to open the empty cupboard and expose that there are no groceries in the cupboard and then they have to live with that”.
- 46 She noted the way in which the liberation movements had contributed to the silence during the 1980s, in that “if women said that they were raped, they were regarded as having sold out to the system in one way or another”.¹⁰ She noted that women were among the cruellest in enforcing these attitudes.

10 Goldblatt B and Meintjes S (1997), 'Dealing with the Aftermath — sexual violence and the Truth and Reconciliation Commission', in *Agenda*, p 5.

47 Ms Thenjiwe Mtintso suggested that men use sexual abuse to show the weakness of the men on the opposing side “because women are supposed to be these people that are protected by these men”. She suggested that sexual violence is also used by those in power to destroy the identity of women who have rejected traditional roles, for example by engaging in ‘masculine’ roles in the struggle. Seifert suggests that in a war situation men, or the ‘nation’, might well collude in silencing talk of sexual abuse.

(T)he commemoration of female war victims would pass on the violation of manhood into peacetime. This would be a continuous reminder that ‘national manhood’ has been humiliated by the enemy. What is chosen instead is the mechanism of repression.¹¹

48 Where the sexual abuse was perpetrated by men within the liberation movements, there were further pressures not to speak. Ms Thenjiwe Mtintso described how “comrades who were contacts inside the country would come outside to report ... They would put up a comrade in a particular place and comrades would sleep with them. And that’s rape. That for me is rape”.

49 She described how, despite her own high position, one of her male comrades said to her:

You know, it’s going to get to the point that I am going to rape you. And it’s going to be very easy to rape you ... and I know there is no way that you are going to stand in front of all these people and say I raped you.¹²

50 In presenting the ANC report to the Commission, Deputy President Thabo Mbeki acknowledged that men in the camps had committed “gender-specific offences” against their woman comrades. He said that the perpetrators had been punished, but did not describe either the offences or the punishment in any detail. In the light of these silences, Commissioner Hlengiwe Mkhize remarked that “the submission fail(ed) women”.

51 Some of those who spoke about sexual abuse said that this was the first time they had done so. Ms Thandi Shezi said that this would be the first time her mother would hear about her having been gang raped by security police. She said that one of the reasons she had remained silent was because, as so often happens with rape

11 Seifert, R (1995), ‘The Female Body as a Symbol and a Sign: Gender-specific violence and the cultural construction of war’ in Andreas Gestrich (Ed) *Gewalt im Krieg. Ausübung, Erfahrung und Verweigerung von Gewalt in Kriegen des 20. Jahrhunderts*. Jahrbuch für Historische Friedensforschung (translation), p 21.

12 Goldblatt & Meintjes (1996), p 58.

victims, she had felt that she was in some way to blame: "I thought I'd done something that I deserved to be treated like that." Ms Kedibone Dube said that after her abduction and rape, she had only told her family that she was kidnapped. Other women said that they had only been able to talk after undergoing counselling.

■ SEXUAL ABUSE

52 Given the close relationship between sex and gender, one of the more obvious differences in the way women and men might experience gross human rights violations is the extent to which they suffered from sexual violations, and the nature of those sexual violations. Of the 446 statements that were coded as involving sexual abuse, 398 specified the sex of the victim. Of these 158, or 40 per cent, were women. Rape was explicitly mentioned in over 140 cases.

53 The Commission regarded rape as 'severe ill treatment' regardless of the circumstances under which it occurred. Solitary confinement was the other abuse categorised in this way. The women who described how they had been raped while in detention were, in effect, often describing a double experience of those abuses regarded as most severe. Ms Thandi Shezi first had her hands and feet chained while she was assaulted.

Then they unchained me, and Sam took the white sack and put it on my head... they poured acid on this water that they were pouring on me and that acid got into my eye and today I can't see properly in the other eye ... they used this electrodes to choke me ... until I bit my tongue and my tongue got torn ... And one of them said, "We must just humiliate her and show her that this ANC can't do anything for her"... then the whole four of them started raping me whilst they were insulting me and using vulgar words and said I must tell them the truth.

54 Ms Phyllis Naidoo reported that, in 1976, when assisting child detainees, she came across several young women who had been raped and impregnated by the officers who detained them. Despite her offer of assistance, "they wouldn't (abort). They feared the special branch."

55 Several women described how they had been sexually abused, although not necessarily raped, while in detention. Ms Evelyn Masego Thunyiswa was twenty-two years old in 1977 when she and others were detained by police on their way to Steve Biko's funeral. She told the story at the special hearing on children and youth:

The other one came to me... and said, "Stand up! I want to see your vagina", and they started hitting me with fists. After that, they electrocuted us... I can't remember where did they apply this to my body because, when they switched it on, I felt as if my private parts were falling... While [I was] crying, they were sitting in front of me laughing .

- 56 Ms Funzani Joyce Marubini was a member of the Youth Congress in the Northern Province at the time of her detention in 1986. She and five other women were arrested.

They did not give us food, they did not give us water, they shut the toilets so that we could not go in there to relieve ourselves... that night, they came and woke us up and they switched off the lights and said we should lie on our stomachs. They started assaulting us with sjamboks [whips] ... assaulting us on our buttocks up to the time that our panties were torn and our undergarments were exposed.

- 57 Their assailants said the reason they had undressed the women was that "they said they wanted to show us as to where Mandela is".

- 58 Ms Nomvula Mokonyane was arrested and put into solitary confinement eleven days after her wedding and two months into her pregnancy. The district surgeons disputed the fact that she was pregnant. They said that her fallopian tube was blocked "and they had to make sure that they unblock them so that then you can begin to have menstruations; and if you begin to resist that then torture will take its own course." Ms Sheila Segametsi Masote also miscarried in detention after being kicked and left "all bleeding, blood oozing down your legs and drying up there."

- 59 Ms Hilda Bernstein documented the torture of Black Consciousness leader, Ms Joyce Dipale, while in solitary confinement for 500 days. Dipale's torture included electric shocks on her naked breasts, buttocks and genitals. She said that she "got used to the pain, but never the humiliation"¹³

- 60 Ms Elaine Mohamed was made to strip, do star jumps, and was fondled by doctors and prison officials. During the hearings, Ms Virginia Mbatha described how her captors "would fondle me in whatever part of the body that they wanted to and I couldn't do anything because my hands were tied to the back".

- 61 Women who were not actually raped spoke about the ever-constant fear that they would be. Ms Joyce Sikhakhane Ranken described how, while in prison,

¹³ Goldblatt and Meintjes (1996) p 16.

she “was terrified that one day I would be gang raped by those bullies.” Ms Thenjiwe Mtintso described an incident in which she was captured by a group of eight security force members and taken to Kei Bridge.

They asked me to get out of the car and they all got out. And I had not minded being beaten or anything or even died in the process, but rape, just as far as I was concerned, this was... going to be a gang rape and they were just going to leave me here...”.¹⁴

- 62 Ms Yvonne Khutwane of Worcester described how she was first humiliated by repeated questions about her sex life. She broke down and cried when one of the young soldiers who had arrested her put his hand inside her vagina: “I was afraid [because] we have heard that the soldiers are very notorious of raping people”.
- 63 There were many stories of how women were degraded when menstruating. Most commonly, women would be forced to stand, with or without pads, with blood running down their legs while being tortured. Ms Phyllis Naidoo was forced to use newspapers instead of pads: “It was horrible, and terribly demeaning.” For Ms Joyce Sikhakhane Ranken, “the feel and smell of the sticky blood [was] a reminder of imminent slaughter at the hands of your torturers”. When Ms Elaine Mohamed was told she was not allowed to use tampons, a policeman “shook the pad and hit it against the wall saying ‘Put it on’”. Ms Mohamed also reported that another woman had rats pushed into her vagina. She said that rats would come into her own cell and eat her soiled pads. “I’d just pick up the bits of my pads, but that experience was terror for me. I always felt that the rats were gnawing at me”.¹⁵
- 64 Stories of rape and sexual abuse were not confined to those that occurred in detention. In the Durban hearings, speaking from behind a screen, a woman described how she was gang raped by youths from an opposing political organisation. Her husband was forced to watch the entire attack. When she awoke in hospital, she was told that she needed a hysterectomy. Like some others, this woman felt she was in some way responsible: “Sometimes I feel like I invited the trouble myself. I feel very degraded and dirty. And especially because I am a Christian.”
- 65 Ms Gloria Ella Mahlophe related how her sixteen-year-old daughter went with two other young girls to a meeting in Thokoza.

¹⁴ Goldblatt and Meintjes (1996) p 35.

¹⁵ Goldblatt and Meintjes (1996), p 19.

When they arrived in Thokoza, they were put inside the hostel. They started undressing them, taking of their clothes. After they've undressed them, they raped them. After they raped them, they took them and threw them outside the hostel, at the back of the hostel and they started shooting at them. They were trying to chop them with some huge bush knives.

- 66 Fourteen-year-old Ms Winnie Makhubela, the child of Ms Mahlophe's brother, was the only one of the three young women to survive. In her testimony, Ms Makhubela said that the meeting was attended by women as well as men, and that the women "started applauding and they were very happy when they saw this happening to us. They slapped us when we tried to plead to them to help us."
- 67 Another anonymous witness from KwaZulu-Natal also described herself as apolitical, but said she lived between an Inkatha Freedom Party (IFP) and ANC area, and that "they used to tell themselves that in my house that's where Inkatha people were staying." One day, on her way to hospital, the woman was offered a lift by a man who then abducted and raped her. This rape was followed by further rapes by other men. The woman was sixteen when this happened, and had been hoping to preserve her virginity as her mother had done. However, the rape resulted in pregnancy "and now I have a child whom I don't know his father". Further, when this woman tried to report the incident to the police, "the judge told me that I was just a concubine in that area, [that] I am lying, they didn't rape me."
- 68 Ms Kedibone Dube, who also said she "wasn't a comrade", spoke about her experience when Inkatha invaded Swanieville in 1992. A man, promising to take her to safety, took her instead to a house in which no one was living.

And each and everyone pulled their own girls there and they were sitting together with their girls. And I said to him, "I'm not going to sleep here, I want to go home." He said, "I will take you to the Xhosa people and the Xhosa are going to kill you." And he beat me up the whole night until he raped me.

- 69 Ms Khosi Dora Mkhize of Mpumalanga said that, when she and her family were attacked in 1987, they were living in an ANC stronghold. However, she said, "I didn't know anything about politics". In the middle of the night, a gang attacked the house, seemingly without reason. Three of the attackers raped her as well – she suspects – as her sister. The assailants stabbed her mother to death, and then burnt down the house. Ms Mkhize said she had never told anyone, even her sister, about the rape. Today, she said, "I totally do not trust a man... I regard

him as an enemy". This legacy was echoed by Ms Thandi Shezi, who said that her experiences had left her unable to have a good relationship with a man: "They say to me I'm frigid. Because if I get involved with a man I get very scared."

■ OTHER PHYSICAL ABUSE

- 70 Several women spoke about how their femaleness affected how they were treated, and how they themselves behaved when tortured. Ms Jenny Schreiner described how, when she articulated her rights, she was met with brute force:

(Mostert) walked around the table and physically picked me up and stood me up ... so that he could slam my back into the wall. Which although, I mean he didn't shatter my skull or anything, but it's a clear statement from step one: "I am in control of this, I am bigger than you, I'm more aggressive than you and I have no respect for you". And ... I think that it's also a question of it being a gender thing. There's a man who is physically picking you up and shoving you into a wall.¹⁶

- 71 Ms Zubeida Jaffer recalled how, when the security police came to detain her at her parent's house, Warrant Officer 'Spyker' van Wyk

said to me as we were going out of my mom's house, "Pollsmoor Prison is a five star hotel compared to where you are going". And then he said that they were going to break my nose and they were going to beat me up and that was as I walked out of my parents' house.

- 72 Ms Elaine Mohamed recounted how she burst into tears when a security policeman said to her, "I really enjoy interrogating women. I can get things out of them and do things to them that I can't do to a man".¹⁷

- 73 Several people spoke of the strength women showed in withstanding severe physical torture. Tokyo Sexwale recalled the detention and trial of the Pretoria Twelve in 1977/8.

We learnt with horror what one of us, Paulina Mohale, went through ... the kind of pain that even we, as men, could not withstand, was doubly inflicted upon her... (N)evertheless ... Paulina Mohale stood tall. To us that represented a focal point of admiration. We often thought that it is only the men who were supposed to withstand the kind of pain.

¹⁶ Goldblatt and Meintjes.

¹⁷ Russell, DEH (1989), *Lives of Courage: Women for a New South Africa*, Basic Books. New York, p 37.

74 Ms Thandi Shezi recalled that, when she was arrested and detained, the members of her unit “were not even too alarmed ... because they knew I was a strong person, I could withstand difficulties.”

75 Nevertheless, this strength could be a double-edged sword for the women concerned. Sandra Adonis, a member of the Bonteheuwel Military Wing, described at the children’s hearing in the Western Cape how she “was like trying to hit back at (the policeman) all the time, but also in a very gentle way not to have him think that this is a stubborn woman, because once you show stubbornness, they would show no mercy”. Similarly, Ms Thenjiwe Mtintso noted that when men:

stood ground against the physical abuse, there was a sense of respect – where the torturers would even say: “Hy is ‘n man” [He is a man]. But when a woman refused to bow down, to be cowed down, then that unleashed the wrath of the torturers, because in their own discourse a woman, a black ‘meid’, a ‘kaffermeid’ [kaffir servant girl], had no right to have the strength to withstand their torture.

76 Ms Mtintso recalled the anger of her captors when she was still holding out after two months of detention – anger “for not fitting the stereotype of this woman who was going to break down... It was always ‘You think you are a man, you think you are strong, we are going to bring you down, we’ve brought down better people than yourself, men, strong men’”.¹⁸

77 Most of those who were detained were kept in solitary confinement, which in itself was understood by the Commission to constitute severe ill treatment. Many were subjected to further physical abuse.

78 Several of the women described in some detail the extent and nature of the physical abuse to which they were subjected. Ms Sylvia Nomhle Dlamini was hit with a wet towel. She was hung through a window and threatened that she would be dropped. She was blindfolded, handcuffed and then assaulted. She was forced to do the ‘frog jump’ and, when sweating, had a tube put over her head. Ms Deborah Matshoba was strangled with a towel and had her head bashed against the wall: “The beating up lasted for a week. I was asthmatic and they refused to give me medication.” Ms Evelyn de Bruin described how her neck was measured against a metre-long rope in preparation for her hanging.

¹⁸ Goldblatt and Meintjes (1996), p 39.

79 Ms Zubeida Jaffer was not allowed to sleep for several days, during which time she was offered only coffee and dry bread. Finally, she was offered curry, rice and tea which she realised, once out of prison, had been drugged. After she had eaten, the captain in charge kept repeating that her heart was going to collapse as a result of the lack of sleep. She was also threatened with being thrown out of a window, threatened with rape, and then left in a room with two policemen.

I was starting to get very hot and I was getting these pains across my chest. I just felt I was getting really ill because I hadn't slept for the few days... And then I started seeing all my veins in my hand dilating... it looked like worms coming out of my hands... I felt pains across my chest and suddenly I started feeling like all my insides were going to come out. And I said to them I am going to get sick.

80 Ms Virginia Mbatha said she, too, had been given daily medication in the form of nine tablets: "I would feel very tired and my eyes would be hazy and when I came out of the prison I was partially blind."

81 Some women, such as Ms Yvonne Khutwane, described how they fought back against their torturers. Ms Khutwane's counter-attack provoked insults and taunts from onlookers that "I am a John Tait and a Gerrie Coetzee", but she persevered until her shirt was "in tatters". Ms Khutwane's anger was heightened by the fact that her young, white male attacker "could be as old as one of my children".

82 While several white women had been detained before, Ms Stephanie Kemp was perhaps the first to be physically tortured when she was arrested in 1964. Ms Kemp's Afrikaner background may have increased her captors' anger, but she also acknowledged her relative 'advantage' in that the fact that she, a white women, was assaulted "made international headlines... (when) this was commonplace for black women in this country."

83 In describing her experiences, Ms Kemp recalled how "Rossouw said he was very sorry that we had used women, but if I wanted to behave like a man, he would treat me like a man." She then related how Warrant Officer 'Spyker' van Wyk "pleaded with Rossouw to allow him to be alone with me. In retrospect it was clear that he was seeking permission to use violence to break me." Warrant Officer Van Wyk was also a primary actor in the stories of several other women victims of abuse. Ms Shirley Gunn recalled her own feelings when confronted with Warrant Officer van Wyk, as she had named her son after Iman Haron, who Warrant Officer van Wyk had been accused of killing in detention.

- 84 Age was no defence against torture. Ms Elda Bani was fifty years old when she was detained in 1986 in Port Elizabeth. A diabetic, Ms Bani was denied medication and forced to eat normal prison food at prison meal times. After Ms Bani was finally taken away, allegedly to see the doctor, she returned with blood on her clothes and injuries on her back. Shortly afterwards she died. Ms Jubie Mayet described another case of an attack on an elderly women when she described how Ms Gladys Hope Manzi, of Umlazi, bore *sjambok* marks on her back.
- 85 Even where they were not physically assaulted, the living conditions of women in detention in themselves often posed severe physical hardship. Ms Zahrah Narkedien spoke about the huge “cat-size” rats that inhabited her cell. Ms Shirley Gunn spoke about the toilet in her cell, whose contents overflowed and ran under the bed and into the yard when it was flushed.

■ PSYCHOLOGICAL ABUSE

- 86 The Commission’s conception of gross violations of human rights explicitly included mental or psychological torture in its definition of torture. Nevertheless, commenting on the first five weeks of hearings, Fiona Ross wrote that “the main focus has been on bodies and on the visible embodiment of suffering”.¹⁹ It was not insignificant that psychologists were prominent among the CALS grouping and that the two opening addresses in the Cape Town women’s hearings were by psychologists Ms Nomfundo Walaza and Ms Cheryl de la Rey.
- 87 It is often difficult to distinguish between physical and psychological abuse. Many of the stories indicated the way in which physical abuse was exacerbated by psychological. Many also showed how physical abuse was used to humiliate the victims. Women, more than men, were prepared to talk about psychological aspects of their experience. Women were also more likely than men to talk about the psychosomatic and psychological problems experienced afterwards.
- 88 Ms Dee Dicks, for example, told the children and youth hearing that she had been arrested and charged with public violence at the age of seventeen: “[T]he experience that I lived through in the 1980s is like forever in my mind. And it has become quite difficult for me to cope and it makes me very angry, because at that time I could and now I cannot”. Ms Zubeida Jaffer who, after sustained torture, signed a statement, said that “it completely made me feel like I was worthless, that I had gone against everything that I stood for... and I was never able to overcome it for many, many years.” Ms Joyce Sikhakhane Ranken, tortured

¹⁹ Ross (1996), p 4.

twenty-six years previously, said she still often found herself “back in the dungeons of solitary confinement, ready to take away my life... I hate it when my mind brings those terrifying memories, but my mind just does it for me,” Ms Jetta Sethwala spoke about how, after the death of her son, the Paballelo community accused her of ‘shopping’ him to the police for money. She said she felt she was “already dead” and that it “will take a lot of effort to make me entirely normal again”. Ms Ruth First and Ms Jenny Schreiner have both described how they tried to kill themselves while in detention.

- 89 One possibility is that women were more affected than men psychologically. Another possibility is that men had more need, because of socialisation, to see the abuse as a test of their strength. If this is true, by listening to women we can also learn something about men’s unacknowledged suffering.
- 90 Solitary confinement and detention are, in themselves, psychological abuses. Often, however, psychological abuse was used consciously by captors to achieve their purposes. In many instances, their tactics focused on the victim’s female roles. Thus, Ms Lydia Kompe said she was asked: “What do you think your husband thinks about you? This is the reason why all the men are getting divorced”.²⁰ Ms Jenny Schreiner related how she was subjected to

*ruthless prying into an area of a person’s personal life that they knew was vulnerable ... and in a context where they are going to send you back to a police cell to sit with nothing other than the emotions that they’ve scratched open. You’re thirty and you’re single, therefore there’s something wrong with you as a woman, and that’s why you get involved with politics.*²¹

- 91 Similarly, Ms Thenjiwe Mtintso described taunts that women combatants had joined because they had failed to find a husband, to look after their children, or because they were unpaid prostitutes:

This consistency of drawing away from your own activism, from your own commitment as an actor, was perhaps worse than torture, was worse than the physical assault... when even what you have stood for is reduced to prostitution, unpaid prostitution.

- 92 Many women related how threats to their children or other family members were used to try to extract information from them. Ms Zubeida Jaffer signed a statement

²¹ Goldblatt and Meintjes (1996), p 21.

²¹ Goldblatt and Meintjes (1996), p 37.

only when police threatened that her father would be detained, and put him on the telephone to confirm the veracity of the threat: "I was shattered at that point. I just felt that it's fine if they involve me, but why involve my family to this extent, and why involve my father?"

- 93 Ms Deborah Matshoba recounted how she had only broken down and cried when she was eventually allowed to see her son and family:

You can go very strong when they beat you up and you become stubborn and you stand your ground, but once they start being kind to you it can, it is a very, very delicate spot.

- 94 Ms Sylvia Nomhle Dlamini described how her child was taken away from her when it wanted to suck. In the end, she stopped breast-feeding and the child became very sickly. This and subsequent events left Ms Dlamini insecure about her ability as a mother: "I don't know whether I acted in the proper manner; I doubt myself as a mother."

- 95 Ms Thandi Shezi was told that her children had been handed over to welfare, "and if I didn't tell them the truth, they would kill my children". Ms Shirley Gunn had a young toddler and was eight months pregnant when she was detained in 1989. Her alleged crime was that she had blown up Khotso House, a deed which, it was later confirmed, was actually performed by agents of the then government. Ms Gunn found her detention particularly hard "at a point in my life where I as a woman really needed to be with other woman and I really needed to be with my mother too, specifically." Despite her objections, Ms Gunn's toddler was taken away from her. She now feels she suffers from an exaggerated and irrational fear that she will lose her child.

- 96 In some cases, there was evidence that a woman's social role was to her advantage. When police first came to detain Ms Jubie Mayet, she pointed to her fatherless children and asked whether they were now going to deprive them of their mother as well: "Some of the children started crying and I remember son number three saying through his tears: 'No, they cannot do this, they cannot take our mother away from us.'" The police left without Ms Mayet, although she was indeed arrested at a later stage. Similarly, Ms Marie Odendaal Magwaza said she heard from another detainee that the security police complained to him that she "had been cheeky and if it had not been for the baby he would have detained me".

97 On the other hand, Ms Phyllis Naidoo described how her maternal duties and feelings were ignored when she was sentenced to ten days imprisonment on failing to report as prescribed by her banning order when her son suffered an asthma attack during her law exams.

■ NON-PRISON EXPERIENCES

98 While torture, as defined by the Commission, occurs in prison or in custody – and is thus primarily perpetrated by agents of the state – there were also women who described gross violations of human rights which occurred outside of captivity, and which were perpetrated both by the state and others.

99 In the earlier decades covered by the Commission, banishments and banning were a popular form of punishment. The punishment provided for people to become their own jailers, thus relieving the state of the burden of providing for them. Ms Frances Baard, an Eastern Cape unionist, was banished to Mabopane in the Transvaal. She was dumped there in the cold with only the clothes she was wearing, without even a blanket for protection. She faced severe isolation on a personal level:

I didn't even know a person in that place; I couldn't even speak the language of the people there. Since I was brought there by the SB [Security Branch], the people were afraid to talk to me.²²

100 Ms Fatima Meer and her husband were first banned in 1954 and needed special permission to speak to each other. In 1977, during her second banning term, someone attempted to kill Ms Meer in the home to which she was confined. She escaped only because a taller visitor opened the door, catching on his shoulder the shot that was aimed at Ms Meer's head level. The would-be assassin's car was suspiciously similar to that seen at the time of Mr Rick Turner's murderer.²³

101 Harassment continued for those who went into exile. Ms Phyllis Naidoo described how her "backside ... is full of potted holes" from a parcel bomb received while outside the country.

102 Ms Selina Williams, mother of Ms Coline Williams, was convinced that her daughter had actually been murdered. Ms Williams was sceptical of the police story that her daughter and Mr Robert Waterwitch had blown themselves up in error. Her other daughter, Ms Wilhelmina Cupido, pointed out that the fact that

²² Goldblatt and Meintjes (1996), p 13.

²³ See further, chapter on *Natal and KwaZulu* elsewhere in this report.

Coline's nose was still intact, while her eyes were out of her sockets, seemed inconsistent with death from a bomb. Ms Williams herself had a further, 'gendered' reason for disbelief. She noted that when the police handed back some of Coline's goods, her bag contained intact sanitary towels. She asked: "How could sanitary towels survive a bomb blast?"

- 103 There were several stories of abduction. For example, Ms Nozibele Maria Mxathule described how, in 1986, a group of young girls and boys were abducted *en route* to a funeral of children shot by police:

They took us to a guesthouse. We were bleeding... They told us to face the wall. We stripped naked, all of us, against the wall, boys and girls the same. They assaulted us. They threw us out on the grass and poured water on us and left us there.

- 104 While much of the evidence related to abuse by government forces, women within the opposition also faced abuse from colleagues. General Masondo, who testified to the Commission about the ANC Quatro camps, gave the following evidence on the position of women MK members in exile

In Angola there are at one time twenty-two women in a group of more than 1 000 people ... there was an allegation that ... Commanders were misusing women ... the law of supply and demand must have created some problems.

- 105 Ms Lita Nombango Mazibuko had a long tale of her suffering at the hands of ANC colleagues while in exile. Ms Mazibuko was responsible for assisting people to cross the border illegally. In 1988, after one of her comrades had been killed, she became "regarded as an enemy and as a spy". She was kidnapped, tortured and interrogated. Torture included hitting and kicking, as well as being forced to stay in holes for long periods. Ms Mazibuko was confident that there "was no mistake in the job that I was doing, but there was some hatred because I did not want to get intimately involved with one of them.... They said I should have some men in my life who could sort out my problems."

- 106 Ms Mazibuko acknowledged that "within the ANC there is no such rule that women should be violated in this manner. We used to be in camps and we would be told that men do not have a right to violate us. You could only get involved if you wanted to." Nevertheless, she reported being raped by at least three comrades, one of whom "cut through my genitals and ... he tied my

hands, my legs, they were apart, he also tied my neck and he would also pour Dettol over my genitals.”

- 107 Attitudes towards women who played active roles in organisations engaged in violent conflict were illustrated in evidence given at the Children and Youth hearings by Mr George Ndlozi, who had been involved with self-defence units (SDUs).

Ms Seroke: *George were there girl SDUs?*

Mr Ndlozi: Yes.

Ms Seroke: *And what was their role?*

Mr Ndlozi: *There were some of them who were, I wouldn't say brave enough because I consider all of them to be brave, there were some of them who used to say we also need to take part, I also need to carry an AK47 to defend, I should not be discriminated against because I am a female. And there were those who were very important, who played parts in cooking. Although it may look a bit sexist, but they decided that they better cook for people who will be going outside to actually defend the community. So they were all involved.*

Ms Seroke: *But there were those who also carried AK47s?*

Mr Ndlozi: *Definitely. Definitely, there were those.*

- 108 Ms Beth Savage described how, in November 1992, she was severely injured in a “terrorist attack” on an annual Christmas party at which she was present. Savage told of the effects on herself and her family. Both she and her daughter suffered nervous breakdowns, and her son was also affected. Her father went into a deep depression that lasted until his death. Nevertheless, Savage felt that the experience had been an “enriching” one “and a growing curve”. She also expressed her appreciation to ANC members who visited her in hospital.

- 109 Ms Annamaria Landman spoke about a 1980 guerrilla attack on the bank in which she worked. She and her colleagues were held hostage for seven hours, during which as the senior employee she acted as spokesperson. After the attack, Ms Landman underwent twelve operations to her elbow, which had been shot. Ms Landman was a single parent at the time of the incident and endeavoured to remain strong so that she could retain her job. She succeeded to the extent that she earned the nickname “the iron lady”. She said that when she was approached to give evidence to the Commission, “this really brought sixteen years of pain and stress to the front”. She underwent shock therapy and was on sick leave at the time she spoke.

110 Most of the women who spoke at the special hearings were political leaders and activists in their own right. There were, however, also those who described how they, or their relatives, had suffered abuse, despite their lack of direct political engagement at the time. Ms Fatima Meer, in reflecting on her own suffering and that of her family, felt that they were perhaps fortunate compared to those who became involved unwittingly:

(P)eople in my position who are articulate, who had the comfort and support of friends, who knew exactly why we were opposing the government, we were far better placed to cope with these sorts of persecutions.

111 Ms Monica Daniels was shot by the police during the 1985 boycotts, on her way back from buying bread, coffee and a candle for her grandmother. As a result of her injuries, first half her arm, then the whole limb were amputated, and she was left with bullets in her leg and vagina. Monica related that she had been planning to go to a dance on the evening that the accident occurred. Now, however, “since my arm is off I don’t go to dances any more”. Monica was not a “political person” at the time of the accident. The incident radicalised her. She was brutally treated – her screams for help when lying wounded were met with a kick and a “voetsek, shut up or I’ll shoot and kill you” from a policeman. Consequently, she then “joined the then UDF because I had already been shot”. Monica’s response to the question as to how the Commission could assist her, was for help with her eight-year-old child – “I cannot even peel a potato”.

■ RELATIONSHIPS

112 As noted, women’s relationships were often used against them to weaken them and extract information. In their testimony, women also related how their experiences had affected those close to them, and their relationships with them.

113 On the one hand, concern for family could make women act fiercely. Ms Adonis told the Commission that she hit a policeman on the head with a chair when he came to arrest her son²⁴. Ms Lephina Zodwa Thobela related how, when she went to visit her husband in prison and a policeman tried to prevent her, she forced her way into the office of a superior officer: “He tried to assault me ... and we started fighting... I challenged him to kill me ... and at that time we were grabbing each other by the throats.”

²⁴ Ross (1996) p20.

114 On the other hand, their involvement in the struggle and subjection to abuse could endanger important relationships. Ms Ntombenkulu Ngubane was served with a banning order in 1963 for ANC membership. While pregnant, she was arrested and jailed for breaking the order. While in jail, her child was delivered by a fellow-prisoner who was a nurse as no doctors were available.

The next day I found my child yellow ... they took my child, they told me they are taking him to another cell in hospital. When I asked them how can they take my child when he is sick and leave me behind, I am supposed to breast-feed my child, they told me, "You are a prisoner" and then the next day they came back and they told me that, "Your child is dead"... they told me that, "this child will be buried by the government". I don't know up until today if my child is still alive or really my child died.

115 On her release from detention, Ms Ngubane's husband, a reverend, claimed that she was "crazy", and began to beat her. The lack of "peace" between herself and her husband ended in divorce.

116 Ms Deborah Matshoba, too, lost her husband because of her political involvement. Her husband "grew impatient" when Ms Matshoba was restricted to Krugersdorp by a banning order. He objected to the restrictions placed on her, which he saw as offending him and his "man's pride". Ms Virginia Mbatha said that after her arrest, "we were not able to conduct a proper family life" and she ended up separating from her husband. Ms Kedeboni Dube said that after being raped during the Inkatha-ANC conflict in Natal, she was not able to conceive, and that this had caused fights with her boyfriend. Ms Fowzia Turner and Ms Joyce Sikhakhane Ranken spoke about the harassment suffered by those who ignored the Immorality Act and married across the colour line.

117 Several women said that their experience had left them unable to handle their children and other family members as well as they wished. Ms Thandi Shezi said she would "beat up" her children, or even her parents, "because deep down within me I was trying to grapple with this painful experience". Ms Sheila Masote described how her mother, out of frustration at being excluded from the struggle, used to beat her. "And this I carried along even into my marriage life. I also bashed my son. I almost killed my son."

118 Several women felt guilty about how their activities had rebounded on those close to them. Ms Virginia Mbatha acknowledged a broader burden, when she apologised to all the mothers whose children she assisted to leave the country: "I

did this because I loved this country and I love those kids.” Others spoke more intimately about their own loved ones.

- 119 Ms Fatima Meer said that her son, Rashid, was only three months old when her husband was arrested for treason. His absence from home “affected the children fairly profoundly”. Ms Nozizwe Madlala recounted how, at two years of age, her son saw his father detained, tried and then sentenced to a prison term of ten years:

Although he has grown up to be a gentle young man, at that tender age he had learnt to hate... My mother tells me that during that time he used to complain of pain, physical pain, for which there was no physical explanation.

- 120 Ms Sheila Masote, speaking as the child of a leading politician, described how, “from my childhood I developed a block. I hated politics. I hated this *gogga* that took my father away from me, that destroyed my home.”

- 121 Many women tried to protect their families. Ms Thandi Shezi, active in the ANC Youth and Women’s Leagues, recalled how, when she told her mother that she suspected she would be detained, her mother told her to run away. “I said: ‘No, if I run away, they’re going to beat all of you here in the house and even the children. I don’t want you to get hurt’.”

- 122 Ms Sylvia Nomhle Dlamini had a longer tale describing how her mother was actually victimised. Ms Dlamini initially felt unable to tell her mother she was a UDF member. “My mother was old and she was very strict. She didn’t like things like politics... because she was a Christian.” One night, when Ms Dlamini was out, police arrived at their house. “Police asked my mother where we were and she didn’t know truly and they took my mother with them.” When her mother returned the following day, she would not relate what happened but simply asked for painkillers. Later she revealed the extent of her torture:

She was given an electrical shock and she couldn’t remember what they used to use hitting her head. Other day they put a plastic over her head and she couldn’t breathe, and one day she told me one white man came and he tied her and then he hit her, and even after she died, she had bruises all over her ribs.

- 123 When her mother died some time later from heart disease, Ms Dlamini felt responsible for her death: “I realised that my mother died because of me.” She said that relatives ostracised her and also blamed her for her mother’s death.

But, she also said that, when her mother was ill, "I asked her as to how she was feeling about the whole issue of my joining politics, she said to me what I was doing was right, because I was fighting for rights." One of the anonymous KwaZulu-Natal witnesses who was raped and impregnated also felt her mother's health was affected by the incident "My mother, after I came back and told her about the story, she had a heart disease. Up until today she is suffering from heart attacks."

- 124 It would be wrong, however, to assume that it is only women who experience strong family ties and the associated guilt and protectiveness. Ms Sylvia Dlomo-Jele related how her son, Sicelo, refused to stay at home once he began to be harassed by the police. He said "that it would not be nice for his parents to see the police killing him".²⁵

■ WOMEN AS PERPETRATORS

- 125 The women who spoke at the hearings spoke as primary or secondary victims of abuses. There were, however, also women who perpetrated abuses on others. In her address to the hearings, Ms Thenjiwe Mtintso pointed out that nowadays:

We go to the women's conferences and hug and kiss, we are kissing with some of the perpetrators. It is okay that we kiss, but it is not okay that they do not come forward and talk about the role that they played.

- 126 She included among the perpetrators those who supported the "boys on the border" by sending them packages, by giving space to them in the media, and by otherwise "egging them on". She was clear that "patriarchy must not be allowed to shield these women, because they claim they did this for their partners, for their husbands, for their brothers."
- 127 Ms Ann-Marie Wallace, on the other hand, spoke as the mother of a white soldier who was killed. She spoke about the pain of losing a son in this way, but also about her and her community's ignorance of what men were doing in the army. She said that they "had come to accept that it is the law. Your children get called up for two years and that's it." She noted that her son, too, "did not have time to learn that it was all lies. According to him, he died a hero because that's all he knew."
- 128 Of the 7 128 applications for amnesty received by the Commission, only fifty-six were known to come from women and 4 665 from men, while in 2 407 cases the sex of the applicant was unknown. Thus only 1 per cent of those where the

²⁵ Ross (1996), p 17.

sex was known came from women. Of the forty women's applications available for analysis, two had been granted amnesty, twenty-four had been refused and fourteen cases were still awaiting a decision at the time of reporting. The two whose applications were granted were ANC members. One had planted bombs and been involved in theft, while the other had been found guilty of possession and distribution of weapons.

129 Amongst those still awaiting decisions were seven women who had applied for amnesty under the ANC's collective responsibility application, or had otherwise failed to specify the exact nature of their act. Of the thirty-eight who had been refused, the most common offences were murder (five applications) and theft or fraud (eight applications).

130 One of the most intriguing applications came from a young Indian woman, who applied for amnesty for what she describes as her "apathy". The application stated that those applying on these grounds recognised that they:

as individuals can and should be held accountable by history for our lack of necessary action in times of crisis ... in exercising apathy rather than commitment we allow(ed) others to sacrifice their lives for the sake of our freedom and an increase in our standard of living.

131 The applicants argued that apathy fell within the Commission's ambit as an act of omission. The application was, however, refused on the basis that it did "not disclose an action or omission which amounts to an offence or a delict in respect of which amnesty can be granted."

132 From the men's side, one of the more bizarre applications was that of Mr Michael Bellingham. Mr Bellingham was one of the more than thirty security policemen who applied for amnesty for the bombing of Khotso House, Cosatu House and 'Cry Freedom' cinemas.²⁶ Bellingham requested amnesty for the murder of his wife on the grounds that she had threatened to reveal his political role.²⁷

133 Several of those who testified at the hearings spoke about the extent to which those who had perpetrated abuses against them were women. They spoke, in particular, about women warders in prisons. The CALS interviews provided further evidence on this topic.

²⁶ Cinemas which dared to show the banned film about the life of Steve Biko

²⁷ *Sunday Independent*, 26 July 1998.

134 Most of those who had suffered explicit torture had done so at the hands of men, most of whom were white. Mr Thandi Shezi explained that “the female used to hand over their assault and brutalisation to their male counterparts”. However, Ms Nomvula Mokonyane said that it was women who pumped water into fallopian tubes. She could not understand this betrayal:

*This woman knows exactly what the effects of that pain will be on that other woman. It is hard to know if you will be able to reconcile with that woman perpetrator.*²⁸

135 In the main, women warders exhibited cruelty in the way they treated prisoners outside of the explicit torture sessions. Thus, Ms Deborah Matshoba described as ‘torture’ the way that women warders threw her (bad) food at her. Her exasperation was such that one day she grabbed the hair of the woman concerned and “started bashing her head against the bars”. Her resistance won her a new warder, as well as exercise time and a weekly shower. Ms Matshoba noted that, when women warders were black, one was able to “conscientise them as time went on and to appeal to their senses and you would sensitise them to the point that they would realise that you are there for them.”

136 Ms Elaine Mohamed said she felt betrayed by the way the women police would “flick with their nails on my nipples, saying, ‘It’s a shame nobody wants you. You’ve obviously never had a boyfriend. No one touched these breasts, else why are they so firm?’”²⁹. Ms Phyllis Naidoo said that while, at first, she thought that women warders would be better because they would understand the women detainees’ fears of rape and violence, her experience of the “horrors” in Durban Central changed her mind.

137 Stephanie Kemp, on the other hand, remembered some kindness. She remembered a 19-year old warder “with uncommon sensitivity” who took the risk of telling her John Harris had been hanged. She remembered the then matron of Kroonstad Prison, Ms Erica van Zyl, who “sent the special branch away. She sat down with me and said that as long as I was in her prison, she would not allow the special branch near me.”

138 At the human rights violation hearing in Port Elizabeth, Ms Ivy Gcina told of the kindness of her warder at North End Prison, a Ms Irene Crouse:

²⁸ Goldblatt and Meintjes (1996) pp 44-5.

²⁹ Goldblatt and Meintjes (1996) p20.

The same night I saw a light at night and my cell was opened. I did not see who was opening my cell. I did not look at the person. She said to me, "Ivy, it is me. I am Sergeant Crouse. I have fetched your medicine". She rubbed me. She made me take my medicine. I told her that I could not even hold anything but I can try. I told her I was going to try by all means. She said "It is fine, do not worry yourself. I will help you". So she made me take the medicine and then she massaged me. Then after that I could at least try and sleep.

- 139 A few days later the local newspaper, the Eastern Province Herald, carried a front page, full size picture of Ivy Gcina hugging Irene Crouse: The report read:

Tortured activist Ivy Gcina was yesterday reunited with her Angel of Mercy – the kind jailer who held her hand and tended her wounds after hours of brutal interrogation by security police. "I never thought you'd remember me", said Irene, 37, as the two women threw their arms around its other on the stoep, crying and laughing at the same time. Ivy, 59, replied: "But after I was assaulted it was you who was there to help me, who entered my cell at night. Can you ever forget someone like that?"

- 140 "We met as human beings, as women," Ivy recalled. "There was such communication there. Ensuring I had a clean towel, asking me how I was. The relationship was so good." Irene felt she was "only doing her duty" when she helped Ivy.
- 141 Ms Deborah Matshoba recalled how a white, male, Afrikaans-speaking uniformed policeman had assisted her by smuggling her asthma spray and tablets to her, and later smuggling her out to see a doctor.
- 142 Outside of the prison context, Ms Agnes Gounden and Ms Zodwa Lephina Thobela described how nurses had assisted and protected them when security police wanted to interrogate them. However, as emerged in the health hearings, nurses (most of whom are women), although not active perpetrators, often turned a blind eye to what was happening. Ms Betty Ncanywa, who worked at Livingstone Hospital in the 1980s, explained that they had been instructed not to obstruct the work of the security forces — that they must "try to refrain from politics, otherwise my future would be in jeopardy".

■ CONCLUSION

- 143 This chapter draws primarily on the testimony of women who made presentations during the three special hearings organised in Cape Town, Durban and Johannesburg. It also draws on the associated submissions to the Commission and on statistics generated from the Commission's database of deponents and applicants. As elsewhere in the Commission, the relatively few women whose experiences are recorded must represent many, many more who did not want to present their own stories, or were not able to do so for some reason. Nevertheless, the limited evidence available confirms the fact that women were active in all roles – as perpetrators, and in the full range of different primary and secondary victim roles. It also indicates ways in which women's experience of abuse might have differed from that of men.
- 144 The chapter suggests further that the definition of gross violation of human rights adopted by the Commission resulted in a blindness to the types of abuse predominantly experienced by women. In this respect, the full report of the Commission and the evidence presented to it can be compared to reports on South African poverty, which make it very clear that while women are not the only sufferers, they bear the brunt of the suffering.