

Volume **SIX** • Section **FOUR** • Chapter **ONE**

**Report of the Human Rights  
Violations Committee**

**ABDUCTIONS,  
DISAPPEARANCES AND  
MISSING PERSONS**

# Abductions, Disappearances and Missing Persons

## ■ INTRODUCTION

1. On 14 October 1986, activist Moss Morudu [JB00520/02PS] went missing from his home in Mamelodi in Pretoria. Shortly thereafter, his family received a telephone call from an unknown person who said that Mr Morudu was where 'he had always wanted to go'. They deduced from the call that Moss had gone into exile, as he had previously discussed leaving South Africa because of ongoing Security Branch harassment. However, Moss Morudu did not return home with other returning exiles after 1990.
2. A few years later, the Morudu family received a visit from members of the Attorney-General's office, who indicated that they believed that Moss might have been the victim of a Northern Transvaal Security Branch hit squad. In 1996, the family became aware of rumours that the Truth and Reconciliation Commission (the Commission) was in possession of an amnesty application relating to Moss Morudu. Moss's mother, Mrs Morudu, began attending every public hearing of the Commission in the Gauteng area in the hope that she would learn of the fate of her son.
3. This is usually the first phase of a disappearance. The family is ignorant about what has happened and is unclear about what the future will bring. Thus begins the long journey of not knowing whether a loved one is imprisoned or dead.
4. Moss's family was informed about the amnesty application. Finally, in October 1999, the amnesty hearing of three Northern Transvaal Security Branch operatives began in Pretoria. The Morudu family heard that the head of the Northern Transvaal's Investigative Unit, Captain Hendrik Prinsloo, had instructed two black Security Branch operatives to abduct Moss Morudu. The two had gone to the home of the Mamelodi activist and, purporting to be MK operatives, had persuaded him to accompany them. They then handed him over to their white colleagues at a pre-arranged spot.

5. According to their version, Moss Morudu was not formally detained, but was taken to a temporary interrogation camp near Hammanskraal where he was held and interrogated for approximately one week. The applicants testified that they did not know when he was removed, or where to. They became aware much later that he was no longer there and assumed that he had been killed, as had other abductees. Neither their commander, Captain Prinsloo, nor other implicated white colleagues applied for amnesty, and all denied the version put forward by the black applicants.
6. Thus, although the amnesty hearing provided the family with new information, the Amnesty Committee was, in the end, unable to establish the exact fate of Moss Morudu. And so the quest of the Morudu family continues.
7. Many other families share the experience of the Morudu family. For them too, continued uncertainty about the fate of loved ones has had devastating consequences. These families remain trapped in the past, unable to move on. Unlike a death, which, however painful, leads eventually to some kind of acceptance, families of the disappeared remain constantly caught between near certainty that the missing person has not survived and hope that he or she will return. In several cases the missing person was the breadwinner, making the burden on the family both financial and emotional.
8. A tiny percentage of families have approached the courts to have the missing person declared dead. This has allowed them to claim unpaid wages or, in some instances, the proceeds of policies held in the missing person's name. In most instances, little or no money is coming in. Expenses increase as families search to find out what happened.
9. The uncertainty of the search and the faint hope that the disappeared will return makes it incredibly difficult for those left behind to cope. The family's life has changed on several fronts, including the political, social and economic. In addition, many face the psychological consequences of dealing with a disappearance without access to psycho-social support or counselling services.
10. During the conflict period, many families bore the pain of the disappearance alone, tormented by uncertainty, fearful of what would happen to them. They feared the consequences of drawing attention to the missing person or to the family. For example, where missing persons had links to anti-government organisations or were students during periods of unrest, families were too afraid to report the

disappearance to the police in case they compromised the missing person's safety. In any case, as a number of statements confirm, those who did report disappearances were often met with hostility. Threats, jeers (such as 'Go ask Mandela where your son is') and sometimes assaults were often the only responses they received from the authorities. Similarly, in areas such as Natal and certain parts of the Transvaal, enquiries could place the entire family in jeopardy from a rival political movement. In such cases, the only option was to search alone: discreetly asking friends, scouring hospitals and mortuaries, desperately trying to find some trace of the missing person.

## DEFINITION OF A DISAPPEARANCE

11. In order to deal with this category of violation, the Commission had to define it. While its founding Act, the Promotion of National Unity and Reconciliation Act No. 34 of 1995 (the Act) used the term 'abduction', this was intended to cover enforced disappearances at the hands of the state, persons who had gone missing in exile or combat, and other missing persons.
12. The Commission had recourse to a number of working definitions developed by human rights groups working in the field. One such was the definition used by Amnesty International, which defined 'disappeared persons' as those 'who have been taken into custody by agents of the State, yet whose whereabouts and fate are concealed, and whose custody is denied'<sup>1</sup>. Amnesty International places the term 'disappeared person' between inverted commas in order to indicate that the persons in question have not really disappeared, but that there are those who know their whereabouts and deliberately remain silent.
13. The UN Working Group on Enforced or Involuntary Disappearances has, in its recent work, begun to define 'a disappearance' as 'a person arrested, detained, abducted or otherwise deprived of his/her liberty by officials of different branches or levels of government, or by organised groups or private individuals acting on their behalf, or with the support, direct or indirect, consent or acquiescence of the government, followed by a refusal to disclose the fact or whereabouts of the person concerned or a refusal to acknowledge the deprivation of his/her liberty, thereby placing such persons outside the protection of the law'.<sup>2</sup>

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<sup>1</sup> Bronkhorst, Daan, *Truth and Reconciliation: Obstacles and Opportunities for Human Rights*. Amsterdam:Amnesty International – Dutch Section, 1995.

<sup>2</sup> Draft International Convention on the Protection of all Persons from Forced Disappearance.

14. The Commission finally defined the category 'Abductions' as 'including those persons who were forcibly detained or arrested and last seen in the custody of the security forces or agents of the state, as well as those forcibly and unlawfully abducted by other known or unknown armed groups or parties'.

## **HOW DISAPPEARANCES RELATE TO OTHER HUMAN RIGHTS VIOLATIONS**

15. Disappearances are inextricably bound up with other human rights violations. Often a disappearance is an unacknowledged form of imprisonment for political reasons. In many instances, a disappearance took place during the first days of custody and, more often than not, resulted in a political killing.
16. In some instances, the body was found. In the vast majority of cases that came to the Commission, however, this was not the case. This has condemned many families to a permanent state of limbo: never knowing, never being able to put it to rest.
17. It is acknowledged that the optimum time to solve a disappearance is in the first few days after it takes place. It is thus important to take action during this early period.

## **CHARACTERISTICS OF DISAPPEARANCES**

18. Generally a disappearance is not referred to as such if the fate or whereabouts of the disappeared are known, if a body is found, or if it becomes known that the victim is dead. The Commission has, for the most part, followed this policy in its classification of cases.
19. Generally, two types of disappearances may be distinguished. The first is a 'temporary disappearance' – an unacknowledged, long-term incommunicado type of imprisonment. The second type of disappearance – and the one that the Commission dealt with in most instances – is where the disappeared person has been killed or has died in unknown circumstances without being traced.
20. In most disappearance cases, the perpetrators remain unknown. The disappearance is carried out secretly and usually illegally. The perpetrators do all they can to avoid being found out, identified or held responsible. The rationale for their conduct is that, as long as the disappeared or the body is not found,

there can be no violation and therefore no perpetrator. This is characteristic of the disappearances carried out by state agents in the South African situation.

21. Another important characteristic of disappearances is that, once a state has chosen to embark on this road to criminality, policy decisions in this respect tend to be taken centrally – although the process of execution is usually decentralised. Disappearances are usually planned by small secret groups within the armed forces, where orders for implementation are delegated through various channels that are often difficult to trace. Depending on the nature of the particular situation, disappearances are usually carried out by military groups, paramilitary groups, the police or death squads operating within either police or military structures. Governments usually permit these groups a great deal of latitude to carry out these deeds, and usually disavow all knowledge of the disappearances.
22. Secrecy is another important facet of disappearances. In the South African situation, a number of units within the police and military became secretly involved in disappearances and killings. These units enjoyed a large degree of autonomy and had access to the funds necessary to take people into custody, make them disappear and kill them. The existence of these units and the secrecy with which they operated made it possible for the former state to deny any involvement in such activities. In addition, once their activities became known, the political authorities of the former state continued to insist that they had no knowledge of the actions of these structures, and that the latter had been acting without authorisation.
23. However, the high rank of the state personnel involved, their easy access to funds and resources, and evidence emerging from amnesty applications by former security force personnel negate this argument. One cannot but draw the conclusion that the former state was centrally involved, not only in sanctioning this tactic, but also in planning and providing funds and resources.
24. When governments are addressed on this issue – either by the international community or by human rights groups – they often reply that the person has fled the country and gone into exile. In a number of cases in South Africa, the former state sought to blame the liberation movements for a disappearance. When laying complaints or seeking answers from the police, families were frequently advised that the disappeared had probably gone into exile. The state encouraged families to believe this and, in some instances, staged elaborate hoaxes to hide the fact that it was responsible for the disappearance. The cases of Mr Stanza Bopape, Ms Portia Ndwande and Mr Moss Morudu are just a few examples.

25. Where the state did acknowledge the disappearance, it often lied about the circumstances in which it took place, alleging that the disappeared had 'committed suicide', had 'been turned' and become an 'informer' or had been shot while 'attempting to escape' the authorities. This became a common response of the former state as it became increasingly more adept and sophisticated at concealing the real facts of a disappearance.
26. A common feature of disappearances in South Africa was for the state to declare its opponents 'the enemy', thus ensuring that their disappearance or killing generated little interest. In this respect, the silence of those who were the beneficiaries of the former state must be noted. Had they questioned more, been less acquiescent and less willing to accept the propaganda of the former government, the former state might not have been able to get away with such criminal conduct. Had the judiciary been more vigilant when these matters came before them – more willing to engage with the issues and less willing to believe the versions of the security forces and the police – state forces would have been less likely to resort to such excesses. There is no doubt that, beyond the political figures within government, the judiciary and civil society had a large role to play in allowing disappearances and killings to continue.

## WHY DISAPPEARANCES HAPPEN

27. The main *raison d'être* for disappearances is that states want to get rid of those who trouble them – without having to use the law as an instrument. Disappearances are one of the most effective ways of removing people the state considers a threat. Mr Mathew Goniwe was a case in point. Regarded as an opponent of the state, he was abducted and killed, as were his fellow activists Fort Calata, Sparrow Mkhonto and Sicelo Mhlawuli. Many others endured a similar fate.
28. Disappearances are usually a very effective way of avoiding international opprobrium. There is no doubt that a large number of troubling inquests – such as the inquest into the death of Mr Neil Aggett – led to government setting up new mechanisms to deal with opponents. The policy on disappearances saved the former state the cost and publicity of trials and inquests, and the acknowledgement of both imprisonment and torture. The state was spared from having to account for its actions in any way.
29. Disappearances also have the effect of causing confusion and sowing discord. Governments can claim that those responsible are groups beyond its control or persons wishing to discredit the state.

30. Disappearances can be used to intimidate political opponents. Families are often told that, if they don't stop asking questions, bothering the authorities or raising a storm in the press, they too will disappear. They are also told that, if they don't keep quiet, they will endanger the life of a loved one. This was confirmed by the testimony of many of the victims who came to the Commission.
31. Disappearances are also an effective way of avoiding international pressure. Although the international community frequently takes issue with governments about the fate of political prisoners and those who are indefinitely detained and tortured, they very rarely address the issue of the disappeared.

## **DISAPPEARED VERSUS MISSING**

32. The Commission dealt with a number of cases where people had gone missing. In some instances, they went missing after a political rally or during a period of political unrest or state of emergency.
33. In a large number of cases reported to the Commission, the disappearance was not linked to a political cause: there was no intent, and the state or armed forces were not responsible for the disappearance.
34. Another category the Commission dealt with were cases referring to persons 'missing in action'. These usually involved soldiers or members of armed forces or groups who went missing, and where it is not clear whether they died in battle or were taken prisoner by the enemy. In these instances, the relatives are also left in a state of great uncertainty. However, in such cases parents or relatives can often rely on the support and assistance of the authorities in whose name the soldier served.
35. It is also usually easier to obtain information about the circumstances in which a soldier went missing. The Geneva Protocols under Article 3 deal with the legal procedures related to those regarded as 'missing in action'.
36. In South Africa, there have been instances where families have been denied relief because the state has refused to confirm that their loved ones were on lawful missions for the country.

## **ANALYSIS OF DISAPPEARANCE CASES REPORTED TO THE COMMISSION**

37. The Commission received more than 1500 victim statements concerning persons who went missing or disappeared after being forcibly abducted.<sup>3</sup> The fate of some 477 people named in these statements remains uncertain. The overwhelming majority of missing persons disappeared between 1985 and 1994 – mainly in the Transvaal and Natal, where there was escalating political conflict during this period. This matches the general pattern of violations recorded by the Commission.<sup>4</sup> In other respects as well, the profile of disappeared persons is no different to that of victims of other violations. Over 90 per cent of missing persons reported to the Commission were male. In those statements where age was specified, 40 per cent were between the ages of 14 and 24, and 31 per cent between the ages of 25 and 36. In those statements where political affiliation was identified, over 70 per cent were members or supporters of liberation movements, while less than 10 per cent were security force members or belonged to or supported pro-government movements such as the IFP. Just over 16 per cent of missing persons are believed to have had no political affiliation.
38. From the statements it received in respect of abductions, the Commission identified the following categories:
- a abductions and enforced disappearances;
  - b disappearances in exile;
  - c disappearances during periods of unrest;
  - d disappearances regarded as out of the Commission's mandate, and
  - e cases of indeterminate cause.

### **MECHANISMS USED BY THE COMMISSION TO ESTABLISH THE FATE AND WHEREABOUTS OF THE DISAPPEARED**

39. The Commission was fortunate in that the legislation under which it operated created a number of enabling mechanisms that allowed it to deal with abductions and disappearances proactively. These included its powers to hold special investigative hearings in terms of section 29; the amnesty process; investigations, and the exhumation process.

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<sup>3</sup> It is unfortunately not possible to give an accurate number of such cases. In a number of instances where disappearances were solved through investigations or amnesty applications, the data was re-coded to reflect the outcome of the investigation. For example, if a missing person was found to have been killed, the coding was frequently changed from disappearance to killing.

<sup>4</sup> See Volume Three, pp. 1–11.

40. The Commission's powers in terms of section 29 allowed it to subpoena those it believed had information about an incident or violation to appear before a special panel of Commissioners and to answer questions. Section 29 powers were successfully used to solicit amnesty applications in a number of cases, and often allowed the Commission to establish the facts surrounding a disappearance.
41. The amnesty process also played an important role in dealing with disappearances. Large numbers of amnesty applications relating to disappearance cases helped the Commission to learn a great deal about what had happened to many of the disappeared.
42. Amnesty applicants also provided the Commission with a great deal of information about gravesites. This allowed the Commission's Investigation Unit to carry out a number of exhumations. These helped clarify the facts surrounding some disappearances, thereby establishing the ultimate fate of the disappeared. A number of cases in KwaZulu-Natal helped the Commission to establish that the disappeared had been killed. The cases of Ms Portia Ndwandwe and Ms Ntombi Khubeka are two examples. A number of other exhumations provided similar relief to families of victims.

## **ENFORCED DISAPPEARANCES**

43. Enforced disappearances include persons last seen in the custody of the security forces, as well as those forcibly and unlawfully abducted by other known or unknown parties.
44. Sixty-four people who were last known to have been in the custody of the security forces remain missing. While the majority of these disappearances occurred during the 1980s, twenty-two disappeared between 1960 and 1979 and nine went missing in the 1990s.
45. A number of these disappearances appear to have been Security Branch abduction operations, targeting specific individuals believed to have been members of the African National Congress (ANC) or Pan Africanist Congress (PAC) both inside and outside South Africa. The case of Moss Morudu (described above) is an example of such an abduction.
46. A similar abduction operation involved members of the Orange Free State Security Branch. MK operatives Joyce Koekanyetswe 'Betty' Boom

[KZN/JRW/051/BL], Nomasonto Mashiya and Tax Sejaname – all based in Lesotho – disappeared in December 1986. Unknown persons delivered the infant of Ms Mashiya to the home of her parents in the Orange Free State at about that time. In early 1987, another MK operative, Mbulelo Ngono [EC0330/96PLZ], was forcibly abducted from Maseru. Three members of the Orange Free State Security Branch, based at Ladybrand, applied for amnesty for the abduction of the ‘Ladybrand Four’, but claimed that they had all had been recruited as sources and had disappeared after being returned to Lesotho.<sup>5</sup> This version was strongly contested by the families, who pointed out that none of the four has been seen since their abduction.

47. Another pattern that emerged was the disappearance of persons formally arrested or detained by the Security Branch or other arms of the South African Police (SAP). One example of this is the disappearance of four Zimbabwean citizens: Mr December Ncube [JB00303/01GTSOW], Mr Mncedisi Helper Nkiwane [JB02648/01GTSOW], Mr Mac Makathini Ncube [JB04064/01GTSOW] and Mr Gideon Ncube [JB02408/01GTSOW]. The Commission came to the conclusion that they were probably apprehended and detained in Johannesburg in the late 1970s. The four are believed to have been part of a group of eighteen Zimbabwean citizens – members or supporters of ZAPU<sup>6</sup> who were working in South Africa at the time.
48. Another such disappearance is that of Ms Nombulelo Thelma Nkosi [JB00175/01ERKAT]. Ms Nkosi, who was detained several times between 1976 and 1984, was taken into custody after police surrounded her home in Sebokeng on the West Rand at 03h00 one morning. She has not been seen since.
49. While the above were all known activists and specifically targeted by the Security Branch, a number of people went missing after being arrested during township unrest. These include Mr Ndlanganyana Mvunyisa [EC1794/97ETK], Mr Maqhilane Solomase Nodosha [EC2064/97ETK] and Mr Mhletywa Silangwe [EC2152/97ETK], who were arrested during the 1960 Pondoland revolt and were never seen again. The Commission received a number of statements from victims who were arrested and severely tortured during the Pondoland revolt.<sup>7</sup>

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<sup>5</sup> See AC2001/238.

<sup>6</sup> Zimbabwe African People’s Union.

<sup>7</sup> See Volume Three, pp. 38–39,42.

50. Similarly, Mr Ramatua Nicholas 'Boikie' Thlapi [JB01185/03NW, JB0118/03NW, JB01187/03NW, JB01452/03NW] disappeared following his arrest in 1986. 'Boikie' Thlapi and his friends left Ikageng near Potchefstroom on 20 March 1986 to attend a funeral wake in Klerksdorp for those killed by police during unrest. The group was arrested at a roadblock and taken to Stilfontein, where they were allegedly subjected to beating and electric shock torture. One of those arrested later told Mr Thlapi (Snr) that he had last seen 'Boikie' lying on the floor of a cell, bleeding from the mouth and nose. Police later conceded that 'Boikie' Thlapi had been arrested, but claimed that he had been released. Despite extensive investigations by, amongst others, the Independent Board of Inquiry and Lawyers for Human Rights, as well as an inquest hearing, the fate of 'Boikie' Thlapi remains unknown. None of the police officers involved in his arrest and detention applied for amnesty. The facts of this particular case warrant a new investigation and possibly future prosecutions.
51. A number of amnesty applications from security force members confirm the above patterns. For example, security force members sought amnesty for no fewer than eighty specified abductions, four of which were among the sixty-four persons listed as still missing following arrest or abduction by the security forces.<sup>8</sup> Of the eighty abductions specified by amnesty applicants, some forty were MK operatives, of whom twenty-one were killed. The fate of eight remains unknown (including Moss Morodu and the 'Ladybrand Four'), while possibly six or seven were recruited by the Security Branch. All those recruited worked as *askaris* for the Security Branch and were based inside South Africa. Not one was returned to the ANC following their abduction and recruitment, as was claimed in the case of the 'Ladybrand Four'.
52. Another pattern that emerged from the amnesty applications was the killing of detainees whom the Security Branch did not wish to release, but had insufficient evidence to bring before the courts; or the disposal of bodies of detainees who had died as a consequence of torture.<sup>9</sup> In several of these cases, the Security Branch had signed release papers to suggest that they were not responsible for the disappearance,<sup>10</sup> or, as in the case of Maisha Stanza Bopape,<sup>11</sup> had claimed that the detainee had escaped.

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8 Betty Boom, Mbulelo Ngono, Moss Morodu and Nokuthula Aurelia Simelane [JB00280/01MPWES]. The remaining 76 abductions for which security force operatives applied for amnesty represent solved disappearance cases as well as cases for which no HRV statements were received.

9 See for example, the killing of Sizwe Kondile [AC/1999/037], MK Scorpion [AC2000/151], Johannes Mabothe [AC/2000/084] & Unknown detainee. For disposal of bodies see Stanza Bopape, Sweet Sambo [AC/2001/141] and Unknown IFP member.

10 See, for example, Sizwe Kondile, Stanza Bopape and Johannes Mabothe.

11 AC/2000/059.

## DISAPPEARANCES THROUGH THE INSTANCE OF OTHER PARTIES

53. Forty-nine persons remain missing following their abduction by members of rival political organisations or unknown persons. The overwhelming majority of these disappearances (75 %) took place in areas of KwaZulu /Natal during the second half of the 1980s and the early 1990s; and to a lesser degree in the PWV<sup>12</sup> area (22 %) during the early 1990s. Most of these disappearances related to the ongoing conflict between the UDF/ANC and IFP in these regions – a conflict the Commission has proved was fuelled by the former apartheid government. Fourteen per cent of missing persons in this category were female and, where political affiliation was specified, 19 per cent belonged to or were supporters of the IFP. This is higher than the proportion of female or IFP supporters in the overall disappearance category.
54. The following are some examples of these abductions.
55. Mr Eric Khumalo [KZN/ZJ/042/DN] lived in an area of Shongweni, Pietermaritzburg, that was deemed to be a UDF area. In February 1987, he went to collect his matriculation results from school. In order to get there, he had to pass through an Inkatha stronghold. He was abducted by a named IFP member and not seen again. The KZP, in whose jurisdiction Shongweni fell, provided no assistance in searching for him. Although the family eventually reported the case and the SAP in Pietermaritzburg conducted a search, the investigation yielded no results. His family appealed for the Commission to find ‘even just a bone’ of Eric Khumalo.
56. UDF supporters abducted Mr Petros Nqobile Mazibuko [KZN/NN/106/PM] in Church Street, Pietermaritzburg, on 28 April 1990. He was suspected of defecting to Inkatha. His girlfriend witnessed Mazibuko getting into the car of some UDF supporters. Later the same men returned his clothing to his girlfriend and told her that they had ‘killed a dog’.
57. Mr Nzimande [KZN/NN/253/PM] told the Commission that IFP members who were waging a war on him attacked his home at Landskop, Pietermaritzburg. His two wives and a daughter were killed and his four-day-old baby was abducted.
58. A small number of disappearances in this category involved abductions by persons involved in street justice or people’s courts initiatives. Included in these

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<sup>12</sup> Pretoria–Witwatersrand–Vereeniging

are the disappearances of three youths, Lolo Sono [JB00188/01GTSOW], Sibusiso Shabalala [JB00189/01GTSOW] and Kuki Zwane [JB05784/01GTSOW] in Soweto in November and December 1988. The three were last known to be in the custody of the Mandela United Football Club and/or Ms Winnie Madikizela-Mandela.

## DISAPPEARED IN EXILE

59. Thousands of people went into exile between 1960 and the early 1990s. The vast majority of these joined the ANC, while a far smaller number joined the PAC or other small liberation groups such as the Black Consciousness Movement (BCM). A number of exiles died in varying circumstances; others started new lives in host countries and chose not to return in the post-1990 period. Inevitably not all those who fled South Africa have been accounted for. Fifty-five of those still missing disappeared after having gone into exile.<sup>13</sup>
60. For reasons of security, people going into exile seldom informed their families of their plans. Consequently, most families had little information beyond the date that the person had left or gone missing. Some were fortunate enough to receive messages or letters; but in many instances families relied on rumours that family members had left South Africa, and few had any idea of their whereabouts.
61. For many families, the only inkling that something was amiss was when the person did not return with the other exiles in the early 1990s.
62. One of those in the exile category reported missing is Luyanda Eric Mose [EC0953/96/ELN]. On 31 October 1983, Luyanda, a seventeen-year-old member of the Congress of South African Students (COSAS), disappeared after leaving his Mdantsane home to buy bread and the local newspaper. After his disappearance, the police continued to look for Luyanda, raiding the family home on more than one occasion, and once surrounding the house in the early hours of the morning. Finally, in 1989, the family received a letter from a friend in Lusaka, informing them that he had seen Luyanda in Angola during 1986. In 1990, Luyanda phoned home, confirming that he was an MK operative and that the organisation was sending him to London to study. This was the last the family heard of him.

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<sup>13</sup> Where a possibility exists that the missing person has died in combat or in ambushes while infiltrating or operating inside South Africa, s/he has been classified as a disappearance in exile. A large proportion of combatants killed inside South Africa were buried as unknown persons at the time. Unless a positive identification was made at the time or subsequent investigations have established the identity conclusively, missing MK operatives remain the responsibility of the organisation.

63. In a small number of exile cases, there is information to suggest that the missing person is deceased. Where families have accepted this information, such cases are no longer classified as disappearances. However, where this information is disputed, often because families have received incomplete or conflicting information, they remain classified as disappearances.
64. In 1977, Xola Martin Jebe [EC0019/96] and his brother left South Africa for Lesotho, where they attended school. Two years later Xola was recruited by MK and left Lesotho in the company of Mr Chris Hani. The family did not hear from him again. When he did not return home from exile, the family began to make enquiries, but received contradictory information from the ANC. His mother, Mrs Madoda, told the Commission that she had spoken to Mr Hani personally, and had been told by him that her son was alive but was still deployed on 'important business.' Later she was advised that he had been killed in combat. When she contacted ANC Headquarters, she was given different dates for the alleged incident. At the time, there were disclosures in the press about torture and executions in ANC camps. This led the family to suspect that Xola Jebe might have died as a result of abuse and that the contradictory versions they were hearing might be the consequence of a cover-up by the ANC. The Commission established that Xola Jebe had, in fact, been killed in combat.<sup>14</sup> Mrs Jebe, however, remained sceptical. This case illustrates how conflicting information can lead to uncertainty and even paranoia.
65. These cases suggest that the circumstances in which people went into exile, and the lengthy period during which there was no contact or information about the missing person, places families in a particularly vulnerable situation. Any rumour or conflicting piece of information may have a destabilising effect and often leads to disbelief and suspicion. The use of *noms de guerre* further exacerbates problems of this kind: families rarely know the 'combat name' of the missing person, and few operatives and commanders in exile know the birth name.
66. While several of these cases require further investigation, all that is required in some cases is reassurance, further information and, where possible, contact with commanders or those immediately responsible for the death of the deceased. For example, Mr Monoleli Kama [EC2257/97PLZ] was killed in the

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<sup>14</sup> The Commission subsequently established that Xola Jebe had indeed left Lesotho with Chris Hani in 1979. After a brief stay in Mozambique he went for military training in Angola and was part of the Madenoga detachment. He later went for further training in the German Democratic Republic before being deployed to Zimbabwe. In November 1983, Xola Jebe (aka Anthony Xaba or Ramyais) and three others infiltrated South Africa from Zimbabwe. The unit was killed in a clash at Spilsby Farm, in the Alldays district, Northern Transvaal. An SADF soldier was also killed in the incident.

December 1982 SADF raid on ANC houses and facilities in Maseru. The family was informed by telegram, but was unable to attend the mass funeral because the Security Branch prevented them from leaving South Africa. At a later stage, they asked a family friend to go to the gravesite. However, the friend was unable to locate a gravestone for Mr Kama among those killed in the Maseru Raid. This created doubt in the minds of family members as to whether he really had been killed in this incident. The information received by the Commission confirms that Mr Kama was indeed killed in the raid. The family needed confirmation of this fact and information about the exact location of Mr Kama's grave.

67. These disappearances place a specific responsibility on liberation movements to assist in establishing the fate of the missing. The Commission notes and acknowledges that, of all the liberation movements, the ANC – despite operating in conditions of hostility and ongoing threats of infiltration – nonetheless maintained records of its membership. It is clear from a number of human rights violations (HRV) statements that, during the years of conflict, the ANC informed many families of the deaths of loved ones in exile or in combat. In some cases, attempts were made to enable them to attend funerals.
68. In the period after 1990, ANC personnel engaged in a co-ordinated effort to inform families of fatalities that had occurred during the exile period. A desk was established at ANC Headquarters to deal with queries about missing persons.
69. The ANC also submitted to the Commission lists of persons who had died in exile. Although it did not detail the circumstances of each case, the list is divided into categories according to mode of death, such as 'died at enemy hands', 'died in accidents', or 'died of natural causes'.
70. While these efforts are to be commended, it is also clear that families were sometimes given incorrect and/or conflicting information. Furthermore, the resources of the missing person's desk at ANC Headquarters were very limited, especially in respect of its research and investigative capacity. In numerous instances, personnel failed to respond to the Commission's requests for information. Current plans to archive documentation at Luthuli House<sup>15</sup> will facilitate in the identification and retrieval of records and may assist in clarifying the fate of missing persons.

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<sup>15</sup> Formerly called Shell House.

71. Whatever the difficulties in following up ANC exile disappearances, the situation was immeasurably worse in respect of PAC cadres and supporters. The PAC submitted very little information to the Commission and generally treated it with suspicion and disregard. Moreover, unlike the ANC, the PAC had conducted no internal enquiries into abuses in its camps or suspicious deaths arising from internal conflict. For the most part, the Commission had to rely on the knowledge of particular PAC members who were willing to assist. Tracing missing persons who had joined the PAC presented a far more intractable problem.

## **MISSING DURING PERIODS OF UNREST OR VIOLENCE**

72. Aside from missing persons known to have been abducted or arrested and those known to have gone into exile, an additional 117 people who are still missing disappeared during periods of heightened unrest. Unlike the abduction and exile categories, little is known about the circumstances of these disappearances, save that the area in which the disappeared person lived or worked was in the throes of political upheaval at the time. In some instances, people may have been killed and not identified; in others, it is possible that they fled the area or were abducted. It is also possible that some of these disappearances may simply have coincided with a period of unrest and were not directly associated with the political context. In other words, further investigation or research is required in order to ascertain the nature of certain disappearances.
73. Here again, most disappearances took place in the latter half of the 1980s (27 %) and the early 1990s (61 %), and the primary sites of disappearance were Natal (46 %) and the Transvaal (44 %), both areas of intense political upheaval. Where political affiliation is specified, 26 per cent of those missing are believed to have had no political affiliation or to have been politically neutral. This is a significantly higher percentage than the overall percentage of missing persons with no political affiliation (16 %), testifying to the extent to which entire communities were engulfed in the political conflict.
74. Mr Maqhilane Nodosha [EC2064/97ETK], Mr Nyangilizwe Bele [EC2066/97ETK], Mr Sijumbo Mlandwelwa [EC0880/96ETK] and Mr Madodana Ndzoyiyana [EC/1659/97ETK] all went missing from Bizana and Flagstaff during the Pondoland revolt in 1960. Mr Phineas Shirinda [JB06393/02NPPTB], Mr James Mogadi Penya [JB00196/01GTSOW] and Mr Mandla Khoza [KZN/SANG/013/DN] went missing from Soweto and Alexandra on 16 and 17 June 1976, while several other persons were reported missing in the ensuing months of the Soweto

uprising. Mr Matshediso Mofekeng [JB05732/03VT] went missing in Sebokeng on 3 September 1984, the date marking the start of a period of extensive political violence in the Vaal Triangle.

75. Twelve-year-old Nkazimulo Mabele [KZN/KM/559/DN] went missing one night during a period of ongoing political violence in KwaMakutha, Natal. His mother testified to the Commission that the family was woken one night by youths who were guarding the area, and was forced to flee for fear of an impending attack by IFP supporters. In the panic-stricken flight, nobody realised that Nkazimulo had been left behind. It was only when they gathered several hours later and returned home that they discovered that he was not with them. Mrs Mabele did not know whether he had been taken by the youths guarding the area or by the attacking party, or whether he had simply run away. Another son, Zakile, later left the violence-torn area and was killed in uncertain circumstances. Mrs Mabele appealed to the Commission:

*I can't live like this. It's much better – I can live with the other. When you've seen your child dying and you bury him that is something that you can comprehend, but the other I cannot live with that.*

## **OUT-OF-MANDATE CASES**

76. Out-of-mandate cases are cases that fall outside of the Commission's mandate period – 21 March 1961 to 10 May 1994 – or where there is no political motive or intent for the disappearance. In general, the Commission placed cases in this category only when it was possible to make a clear determination. Numerous cases in which no political context was directly evident from the HRV statement were placed in the category 'cases of indeterminate cause'. This is largely because ruling a case out-of-mandate effectively precluded the Commission from investigating and thus from the possibility of granting reparation. There are forty-three missing persons in this category.

## **CASES OF INDETERMINATE CAUSE**

77. There are 149 missing persons who do not fit neatly into any of the above categories. In several cases, classification was not possible because the statement from the family gave insufficient details about the disappearance. In other instances, more than one reason may have been given for the disappearance. For example, a family may believe that their missing son left to go into exile, but has received

conflicting information about whether or not he reached his destination. Some of these disappearances may well have taken place during periods of generalised political upheaval. However, they have not been included in the above category because the statement did not contain sufficient information indicating that there was political unrest in the area from which the disappeared person came. In a number of instances, the statement provided no immediate political context.

78. The case of Mr December Ncube provides an example of this. Mr Ncube went missing after being arrested at the home of his wife's employer in February 1980. Nothing in the statement directly suggests a political context, nor does the statement identify him as having had any political affiliation. As a consequence, this case statement was originally ruled out-of-mandate during the findings process. However, during a review of the disappearance files, a press-cutting was found in a separate file dealing with another disappearance. This listed Mr Ncube as one of eighteen ZAPU members who went missing inside South Africa between 1977 and 1980 (see above).
79. Mr Roy Lovely Gondwe [JB01223/01MPNEL], 26 years old and of unknown political affiliation, was visited by two black men at his place of work in White River, Transvaal, on 5 August 1985. The two men returned later and spoke to Mr Gondwe again. Before leaving his place of work, Mr Gondwe gave a fellow employer an envelope with the request that it be passed on to his family. Later, the white regional manager arrived to lock up, a task normally undertaken by Mr Gondwe. The envelope delivered to Mr Gondwe's family contained his personal effects, some money and a note implying that he would not see them again. While nothing immediately suggests a political motive, it cannot be conclusively ruled out. The statement suggests, for example, that the two men so obviously connected with Mr Gondwe's disappearance may have been Security Branch operatives.
80. On 25 September 1985, Mr Ernest Justice Ramokoko [JB00327/01GTSOW] made breakfast for his mother (an unusual occurrence) before leaving the house. He was never seen or heard of again. Earlier that month, Mr Ramokoko had been charged with other students for a politically-related offence, and was out on bail. It is thus highly possible that Mr Ramokoko went into exile and that the breakfast he prepared for his mother was a form of farewell. However, it is also possible that Mr Ramokoko decided to jump bail and that something untoward happened to him at a later stage.

81. The Commission wishes to note that further investigations into a number of such cases may lead to their eventual resolution.

## **THE COMMISSION'S APPROACH TO DISAPPEARANCE CASES**

82. It must be said from the outset that investigating disappearances requires a very focused, multi-faceted approach, a dedicated investigation unit with expertise in investigating human rights violations, good research capacity and specialised forensic skills.
83. The Commission did not have the resources to establish a unit solely dedicated to investigating disappearances. The Commission's Investigation Unit was overwhelmed by the large number of violations and incidents it had to investigate. 'Disappearances' were simply one of the categories that needed investigation. In addition, neither the Investigation Unit nor the Commission recognised the limitations of a number of its policies and procedures with respect to this category of violation until fairly late in the process.
84. In retrospect, the Commission should have recognised that it had limited capacity to deal properly with this category of violation and prioritised its intended outcomes. Instead it tried to investigate all the cases it received.
85. The Commission was greatly assisted by information emerging from amnesty applications. Indeed, many amnesty applicants also assisted in trying to establish the fate and whereabouts of the dead and their graves. However, some amnesty applicants failed to confess to the killing of those whose abduction they admitted. This placed a burden on the Commission to rebut the testimony of amnesty applicants, which it was ill equipped to deal with.
86. The consequence of this is that a number of amnesty applicants were granted amnesty for an abduction they admitted to, while the families of the disappeared still have no finality about whether the disappeared is dead. These cases must be taken further by the prosecuting authorities in the future.

## PROBLEMS OF CORROBORATION

87. The Commission received more than 22 000 HRV statements. Most statements contained information relating to multiple victims, requiring the Commission to verify more than 40 000 individual cases. Most statements also referred to more than one violation, thus significantly increasing the number of violations to be corroborated. Although it was impossible for the Commission to investigate each individual case, it was obliged to make victim findings, the effect of which was to make victims and their families eligible for reparation. As a result, the Commission adopted a policy of low-level corroboration when determining whether or not a person was a victim of a gross violation of human rights. In essence, this meant that instead of a full investigation, a series of corroborative 'pointers' would be established – for example the retrieval of a confirmatory press report, or an entry in an SAP occurrence book or a hospital file.
88. In retrospect, this approach was not useful when dealing with disappearances. In such cases, corroborators generally resorted to fairly routine procedures: a letter requesting information would be sent to the relevant SAP office or, in cases of a person missing in exile, to the ANC Missing Persons' Desk at Shell House. In many instances, these requests received no response and the matter could not be taken much further.
89. Where a disappearance was potentially associated with political unrest, the corroborator would note this. In a few cases it was possible to identify actual incidents and, more importantly, deaths. More often, a general pattern would be observed. For example, when Katlehong was the scene of conflict between the ANC and IFP, a number of people were killed. It is thus probable that the missing person was a victim of this conflict, although there was insufficient information to confirm this as fact.
90. In most disappearance cases, family members were not able to give the Commission a great deal of detail or information, making corroboration extremely difficult. This added to problems in tracing a missing person or establishing the facts surrounding a disappearance .
91. In some instances, poor statement-taking also impacted on the corroboration process: basic information such as the personal details of the victim and the circumstances of the disappearance were not always recorded correctly. The Commission was sometimes able to take a second statement or to obtain a

photograph. Where this proved impossible, it was difficult and often impossible to make any progress. These incidents also require further investigation.

## **VICTIM FINDINGS**

92. Disappearance cases presented the Commission with a real challenge. Even where most factors pointed to the probability of the disappeared being dead, it was not possible for the Commission to make a finding to this effect in the absence of conclusive proof. Were such a finding to be made, the file would have to be closed, ending the hope of any further investigation into the matter.
93. Although the inability of the Commission to make a finding obviously impacts on the family's immediate ability to access reparation, this should not prevent them from applying to the President's fund for reparation once the disappearance is resolved.
94. The Commission has always taken the view that unsolved disappearance cases should be further investigated by the National Prosecuting Authority. This unfinished business remains the responsibility of the state. The Commission's fuller report and the special database dealing with disappearances will be handed to the Ministry of Justice and the National Director of Prosecutions, with clear recommendations for further investigation in order to bring finality to these matters.

## **RECOMMENDATIONS**

95. The Commission tried as best it could to carry out its mandate to 'compile of list of the disappeared and those abducted and establish their fate and whereabouts'. It did manage to act as catalyst by bringing disappearance cases to the fore. It also resolved a large number of cases, enabling a number of families to gain a measure of closure. However, despite every attempt by the Commission to complete its work, a number of cases remain unresolved.
96. The resolution of these disappearance cases is perhaps the most significant piece of unfinished business for the Commission. The Commission is therefore of the view that these cases should not simply be abandoned, but that further mechanisms should be put in place to finalise them.

97. After the closure of the Commission, the responsibility for this work passes to the state. This is in line with international humanitarian and human rights law, which obliges governments and other parties to a conflict to determine the fate of the disappeared.<sup>16</sup>

98. The United Nations has condemned disappearances as a grave violation of human rights and has stated that their systematic practice is ‘a crime against humanity’. In 1998, the Working Group on Involuntary or Enforced Disappearances issued a General Comment to Article 19 of the 1992 Declaration on the Protection of All Persons from Enforced Disappearance.<sup>17</sup> The Declaration imposes a primary duty to establish the fate and whereabouts of disappeared persons, itself an important remedy for victims. Article 19 complements this duty. It provides as follows:

*The victims of acts of enforced disappearances and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible. In the event of the death of a victim as a result of an act of enforced disappearance, their dependants shall also be entitled to compensation.*

## **RECOMMENDATIONS FOR TAKING THESE MATTERS FURTHER**

99. The Commission recommends that the state implement the Commission’s recommendations regarding disappearances. The recommendations are as follows:

### **Recommendation 1: Establishing a special task team**

100. A task team should be established within the office of the National Director of Public Prosecutions and be given a specific mandate and time frame. The mandate should include conducting further investigation into individual cases, confirming the disappearance and, where appropriate, making a finding conferring victim

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16 For relevant articles in the Geneva Conventions see GCIV, Art 26; in Additional Protocol I see Articles 32, 33 and 74. Although the category of missing persons is not specifically addressed in Additional Protocol II dealing with non-international armed conflicts, there nonetheless remains an obligation to search and account for such persons in terms of customary international law. While the Geneva Conventions address the issue of persons missing as a result of hostilities, certain aspects of international human rights law address the issue of enforced disappearances and abductions. See, for example, the UN Declaration on the Protection of All Persons from Enforced Disappearance and Article 7 of the International Criminal Court Statute. A Draft Convention on the Protection of All Persons from Forced Disappearance obliges states to define enforced disappearances as common-law crimes and prohibits the granting of amnesty to perpetrators who have not been brought to trial and convicted (Articles 5 & 17). Aside from formal international instruments, considerable jurisprudence has developed, especially in Latin America, where the use of enforced disappearances was used on a vast scale.

17 Report of the Working Group on Enforced or Involuntary Disappearances, E/CN.4/1998/43, 12 January 1998 at 16.

status on the disappeared. This will enable the families of the disappeared to access reparation. In addition to finalising findings, the task team should compile appropriate recommendations to bring closure to these issues at the end of its mandate period.

101. The task team should work closely with organs of civil society currently involved in related areas of research and investigation. If based in the Office of the National Director, the task team would have the authority to access the files of various state authorities – including the police, the military and the Departments of Correctional Services and Home Affairs.
102. Such a task team would require extensive powers – including the power of subpoena and search and seizure. In addition, the task team would require the full co-operation of relevant state institutions in order to gain access to state archives, including those of the military and the police. It would also need to be able to access the archives of the ANC and retrieve information from the PAC.

### ***Scope***

103. While a large number of families made statements to the Commission about their loved ones, the list of persons identified as having disappeared as a result of the conflicts of the past is clearly incomplete. There are undoubtedly scores of families in similar circumstances who have not made statements to the Commission for a range of reasons. In the last three years, victims' groups have collected a large number of statements from families whose loved ones have not returned and whom they regard as having disappeared. A decision will need to be made about whether consideration should be given to such cases. This decision needs to be made in parallel with decisions about victims of other violations who did not come to the Commission.
104. A further consideration concerns the number of persons who disappeared or were displaced during the ongoing violence in KwaZulu-Natal after the end of the Commission's mandate period. The Commission urges the state to consider these cases in order to bring closure for the families.

### ***Investigation***

105. The Commission experienced problems with corroboration and its investigations were considerably hampered by the paucity of information contained in the

statements made by families to the Human Rights Violation Committee. The Commission considers, therefore, that the starting point for any task team would be to visit families and gather more information about disappearances. Where possible, photographs of the missing person should be affixed to the statement.

106. The following guidelines are offered for further investigation into disappearances in each of the categories identified earlier:

- a **Category A (Enforced disappearances):** An investigation of category A cases should be guided by the principle that it is the obligation of perpetrating parties to account for the disappearance. It is not sufficient for such parties to claim that the missing person was released or recruited, even where release records are produced.

In several amnesty-related cases, a number of applicants sought amnesty for the abduction and killing of unidentified victims. However, a large number of operatives involved in these abductions did not apply. The task team must make every effort to locate those operatives who have not applied and who have been identified for further investigation, followed by prosecution where necessary. The task team should also make every effort to identify those victims who were not identified by amnesty applicants. The fact that amnesty has been granted does not mean perpetrators should not be required to co-operate with the task team by pinpointing localities where persons were killed and possible grave sites where the disappeared may have been secretly buried.

- b **Category B (Missing in exile):** Category B cases should be guided by the principle that the relevant liberation movement needs to account for its missing members. As already noted, the ANC has already made some effort in this direction. There are, however, numerous inaccuracies and inconsistencies in the various lists produced by the ANC. These lists<sup>18</sup> must be collated and verified. Other sources of information include information submitted to the Special Pensions Board.

- c **Category C (Missing during periods of unrest):** As a first step, the task team should expand on the Commission's list of incidents during periods of unrest, particularly during the various states of emergency. The list should detail key localities and time periods. Compiling such a list requires the utilisation of a range of sources – documentation produced by monitoring organisations, surviving police documentation, newspaper reports, mortuary records and so forth. People taking extended statements from families need

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18 Such lists include deaths in exile (submitted to the Commission), combat deaths inside South Africa, returning exiles, names submitted to the Motsuenyane Commission and integration into post-transition security force lists.

to pay particular attention to establishing as accurate a time and locality frame as possible, as well as detailed pre-mortem information related to particular incidents.

- d **Category E (Cases of indeterminate cause):** Here investigation and research need to be directed towards moving persons in this category into one of above three categories or into Category D (non-political/ out of mandate) More detailed statements from family and associates should facilitate this process.

### ***Findings***

- 107. Once the task team has completed its work and compiled its report, it will need to make findings so that the families of victims can access reparation.
- 108. Findings need to be made for all cases solved by the task team. Findings should be made with respect to solved cases in line with the approach taken by the Commission. Once criteria are established, the task team will need to make findings for all unsolved cases.

### ***Further action***

- 109. Where the task team is satisfied that a person has disappeared or has died, and a finding to that effect has been made, it will need to facilitate the presumption of death. Death certificates will need to be issued and the families must be referred to the President's Fund for reparations.

## **Recommendation 2: Reburials, exhumations and memorials**

- 110. The task team's mandate should include the possibility of identifying gravesites and facilitating exhumations in conjunction with civil society groupings working within this arena.
- 111. Memorials should take into account the concerns and wishes of families of the victims.

### ***The role of mortuaries and undertakers***

- 112. When investigating disappearances and conducting exhumations, it became apparent to the Commission that insufficient attention and care had been paid

by those responsible for the handling and burial of unidentified persons and paupers. This is doubtless the consequence of a racist system in which the loss of black life was regarded as being of little importance.

113. The Commission recommends that current legislation, policies and procedures in respect of the handling of unidentified persons and paupers be subjected to scrutiny by the Law Commission. In addition, where municipalities award tenders to funeral companies, it is important to ensure that these companies are subject to proper monitoring.

### ***Records relating to unidentified persons and paupers***

114. Current practices regarding the retention and disposal of records (including post-mortem and inquest records) relating to unidentified remains should be reviewed.

## **CONCLUSION**

115. The Commission notes that accounting for the disappeared remains an important reparation mechanism for victims and their families. In this regard the Commission urges the state to take into account the following observations and recommendations:<sup>19</sup>

- a It is essential to protect all persons from becoming unaccounted for, without distinction as to the deliberate or incidental character of the events leading to the situation.
- b It is essential that families know the fate, including the whereabouts and, if dead, the cause of death, of family members who are unaccounted for.
- c The principal responsibility in preventing persons from becoming unaccounted for and in ascertaining the fate of all those who are not accounted (as soon as they are reported missing) lies with government authorities. Armed groups also have a responsibility in this regard.
- d Inter-governmental organisations acting in conformity with their respective mandates should be available to support government authorities and armed groups in fulfilling their responsibilities and, if they cannot or will not meet their responsibilities, should take appropriate action.
- e Non-governmental organisations, acting in accordance with their mandates, should make every effort to prevent persons from becoming unaccounted

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<sup>19</sup> Courtesy of International Conference of Governmental and Non-governmental experts. Geneva (ICRC): The Missing Conference, February 2003.

- for and to clarify the fate of those who have become unaccounted for.
- f It is essential that all those involved respect each individual's inherent human dignity in all circumstances.
  - g Every effort should be made to respect the cultural, social and religious or spiritual context specific to each situation.

## **Prevention**

116. Respect for international humanitarian and human rights law is fundamental to preventing persons from becoming unaccounted for. There must be full implementation by state parties and dissemination of these obligations.

## **Clarification of the fate of persons unaccounted for**

117. It is crucial that families receive information on the individual fate of unaccounted-for family members. Families and communities also need acknowledgement of the events leading to persons becoming unaccounted for, and for perpetrators to be held accountable.

## **Information management and the processing of files on persons unaccounted for**

118. Co-ordination of activities and the sharing information will heighten the effectiveness of the actions taken to ascertain the fate of persons unaccounted for.

## **Management of human remains and information on the dead**

119. The principle responsibility for the proper handling of the dead without adverse distinction, and the provision of information to families with a view to preventing anxiety and uncertainty, lies with government authorities and armed groups.

Measures that can be taken include:

- a ensuring that all feasible measures be taken to identify the human remains of those who died and to record their identity;
- b avoiding obstruction of, interference with or impediments to the identification of human remains;
- c issuing death certificates;
- d ensuring that all involved respect the legal rules and professional ethics applicable to the management, exhumation and identification of human remains;

- e ensuring that forensic specialists, whenever possible, carry out the exhumation and identification of human remains;
- f ensuring adequate training for all those collecting information on the dead and handling human remains;
- g respecting and developing professional ethics and standards of practice for forensic specialists working in international contexts, and
- h beginning a process of exhumation and identification only once a framework has been agreed on. That framework should include:
  - the establishment of protocols for exhumation, ante-mortem data collection, autopsies and identification based on scientifically valid and reliable methods and technologies and/or customary, clinical or circumstantial evidence that are deemed appropriate and which have been previously adopted by the scientific community;
  - appropriate means of associating the communities and families in the exhumation, autopsy and identification procedures, and
  - procedures for handing over the human remains to the family.

## **Support for the families**

120. The material, financial, psychological and legal needs faced by families awaiting clarification of their family members' fate should be addressed by the authorities concerned – when necessary with the support of inter-governmental and non-governmental organisations. Measures that can be taken include:

- a providing targeted assistance with the aim, as soon as circumstances allow, of promoting the families' self-sufficiency;
- b addressing the legal situation of persons unaccounted for and the consequences for family members, including property administration, guardianship and parental authority;
- c ensuring that children receive special support and protection, and particularly taking measures to reunite unaccompanied children with their families;
- d giving special attention to the needs of single heads of families in the light of the specific circumstances women frequently face in such situations;
- e ensuring that families of persons unaccounted for benefit from support programmes in order to adapt to their altered situations and come to terms with events. Psychological support and, whenever necessary and feasible, psychiatric treatment should be provided to those in need. As far as possible, programmes should be built on local health and healing systems, and
- f encouraging family networks and associations, in order to provide a forum for mutual support.

## Families and mourning

121. Respect for the dead and for local funeral rites support peace and social order.

The process whereby families are informed that a family member has died and human remains and/or personal effects are returned needs to be well prepared.

In addition:

- a the death and the mourning practices of individuals and communities need to be respected in all circumstances, and
- b the planning and organisation of commemorations should be left to the families and communities concerned.

### Poem by Ariel Dorfman<sup>20</sup>

And every year September 19th  
(soon it will be four years, can so many years have gone by?)  
I will have to ask her again  
If there is any news  
If they have heard anything  
And she will say no, thank you very much,  
I appreciate your concern,  
But her eyes will keep saying  
Wordlessly  
What they said the first time  
(soon it will be three years –  
how is it possible?)  
no, thank you very much,  
I appreciate your concern,  
But I am not a widow  
So stay away from me,  
Don't ask me for anything,  
I won't marry you,  
I am not a widow,  
I am not a widow,  
Yet

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<sup>20</sup> Printed in Index on Censorship, Vol. 8, No 3. 1979.

## APPENDIX

### LIST OF DISAPPEARED AND MISSING PERSONS

The following list is a list of the persons currently listed as disappeared or missing. It is possible that not all missing persons are recorded here, although every attempt has been made to capture all names. Similarly, it is possible that there are spelling errors, and in a few cases that a persons name may be recorded twice with slightly different spellings. The Commission apologises for any inaccuracies in respect of this list.

ABDULWAHAB, Zakier [JB01351/02PS]  
ABRAHAMS, John aka Gaika [JB05149/03WR]  
ADAMS, Abe Tony [JB05980/01GTSOW]  
AMATHENJA, Billy Veli [JB00973/01GTSOW]  
APHANE, Stefaans Losi [JB022090/01MPMOU]  
BADIMO, Frans Madimetja [JB02729/01GTTEM]  
BASI, Mkanyiselwa [KZN/MR/327/RI]  
BEFILE, Khawulezile Michael [EC2390/97UIT]  
BELE, Nyangilizwe [EC2066/97ETK]  
BHENGU, Senzosenkosi [KZN/TP/012/DN]  
BHOSHOMANE, Atamo Abel [JB00979/01GTSOW]  
BIBI, Michael [EC2149/97ELN]  
BLAAUW, Xolile Petros [EC2801/97UIT]  
BLOU, Ndlamafa [EC1292/96KAR/ [EC1297/96KAR]  
BOKABA, Obed Makibe [JB00364/03NW]  
BOOM, Joyce Koekanyetswe aka Betty Boom or Betty Malati [KZN/JRW/051/BL]  
BOPAPE, Mackenzie [JB00567/02NPPTB]  
BUTHELEZI, Bongani aka Bobo [JB05745/01GTSOW]  
BUTHELEZI, Isaac Bongani [JB03357/01ERKAT]  
BUTHELEZI, Stephen [ECO398/96ELN]  
BUTHELEZI, Victor [KZN/SS/217/VH]  
CEKISO, Ellias Mnyamezeli Beatrice [CTO1562/FLA]  
CELE, Jeanette Ncuncu [KZN/NNN/383/PS]  
CELE, Mondli Vusamazulu [KZN/ZJ/402/DN]  
CELE, Nicholas Ndoda [KZN/NNN/379/PM]  
CELE, Nkosiyezwe Elliot [KZN/ZJ/054/DN]  
CELE, Shadrack Bonginkosi [KZN/TCN/034/PS]  
CELE, Victor Columbia [KZN/MZ/014/DN]  
CELE, Vorster Bhutiza [KZN/NMS/024/DN]  
CHAKA, Joseph Lebelo [KZN/JRW/092/LT]  
CHIYA, Thokozani [KZN/NM/040/DN]  
DAHILE, Henry Barnabas Loshe [JB05077/01ERKAT]  
DAKI, Lennox Xolisa Nkonkobe 'Loyiso Mvelo' [EC2092/97ELN]  
DAMANE, Dunisani Christopher [JB05709/01ERKAT]  
DAVID, Simphiwe Truman Hobongwana [EC1176/96UIT]  
DHLAMINI, Aaron Makhosi [KZN/PJM/015/KRS]  
DINTOA, Elias [JB04268/01ERTEM]  
DLADLA, Gesi Lucas [JB03758/01MPPIT]  
DLADLA, Mthembu Raymond [JB03374/01ERKAT]  
DLADLA, Musa [KZN/NNN/045/DN]

DLAMINI , John [JB/06240/01MPNEL & JB06216/01MPNEL]  
 DLAMINI, Boy-Boy Henry [KZN/PMB/203/PM]  
 DLAMINI, Gingi [KZN/HG/909/DN & KZN/GM/103/DN]  
 DLAMINI, Henry [KZN/SN/070/MP]  
 DLAMINI, Lindiwe [KZN/MM/005/DN]  
 DLAMINI, Mbuso [KZN/NN/173/DN]  
 DLAMINI, Unspecified [KZN/FN/239/DN]  
 DLAMINI-NKOSI, Charlotte Siphwiwe [JB02486/01GTTEM]  
 DLOVA, Sqhamo Woodworth [JB03037/01ERKWA]  
 DLUDLU, Esau [JB03897/01MPWES]  
 DYANTJIE, Sanwabile [CTO8607/FLA]  
 FAKU, Matthews Lindile [EC/0571/96PLZ]  
 FAKU, Phumelele Michael 'Sugar' [CTO3067/ECA & CT00726/ECA]  
 GAMBU, Herbert Sithembiso [KZN/NN/369/DN]  
 GCWEZA, Meze Petros [KZN/TCN/006/PS]  
 GONDWE, Roy Lovely [JB01223/01MPNEL]  
 GOIRANA, Mongameli aka Mobbs [JB01056/02PS]  
 GUMEDE, Melusi Cyril [KZN/GM/028/DN]  
 GUMEDE, Not specified [KZN/NNN/126/PS]  
 GUMEDE, Siphho [KZN/NN/303/DN]  
 GWALA, Patrick Siphwiwe [KZN/PM/074/MP]  
 GWALA, Siphho [KZN/MZ/009/DN & KZN/MR/175/DN]  
 HADEBE, Phillip [KZN/NAM/072/DN]  
 HLONGWA, Mtumaseli [KZN/MM/013/DN]  
 HLONGWANE, Boy Siphho [JB05796/01ERKAT]  
 HLOPHE, Thuthukani John [KZN/GM/032/DN]  
 JACOBS, Johannes [JB00666/01GTSOW]  
 JACOBSON, Andries van Vuuren [KZN/PAM/022/FS]  
 JALI, Delani [KZN/MZ/009/DN & KZN/MR/175/DN]  
 JEBE, Xola Martin aka Anthony Xaba [EC0019/96]  
 JINIKWE, Hilton Vusumzi 'Matayi' [EC0091/96TSI]  
 KAKAZA, Andile [JB05935/01GTSOW]  
 KAMA, Mnoneleli Samson [EC2257/97PLZ]  
 KARAPI, Andries [KZN/GM/010/BL]  
 KAULELA, Mzamo Louis [EC2486/97UIT]  
 KEIKELANE, Mpe Jonas [JB05948/01GTSOW]  
 KEKANA, Reginald [JB01283/02PS]  
 KGIBA, Samuel Lethola [JB01197/03NW]  
 KHAMBULE, Nhlanhleni Pius [KZN/HG/909/DN & KZN/GM/103/DN]  
 KHANYILE, Lucky [KZN/SN/169/DN]  
 KHESWA, Sbusiso Blessing [KZN/MR/179/DN & KZN/KM/514/DN]  
 KHEWU, Themba [JB04482/01ERKAT]  
 KHIBA, Mathabiso Grieta [JB01516/03NW]  
 KHOASHE, Tieho [CT00794/KAR]  
 KHONOU, Simon [JB06315/02PS]  
 KHOWA, Zwelifile [KZN/AB/031/PS]  
 KHOZA, Bhuthiza Vincent [KZN/TG/016/DN]  
 KHOZA, Mandla Arthur [KZN/SANG/013/DN]  
 KHOZA, Rain [JB01779/01GTTEM]  
 KHUBEKA , Zoza Jerry [KZN/MR/480/LS]  
 KHUBONI, Cornelius Bhekambhele [KZN/MR/462/IX]  
 KHUMALO, Ehab Siphho [KZN/GZ/012/PM]  
 KHUMALO, Gugu Erick [KZN/ZJ/042/DN]  
 KHUMALO, Jack [JB05344/02NPPTB]  
 KHUMALO, Joseph Bheki [KZN/SANG/006/DN]

KHUMALO, Thelma Nothando [KZN/DM/016/PS]  
 KHUZWAYO, Nhlanhla Victor [KZN/NNN/630/DN]  
 KHUZWAYO, Senzo Eugene [KZN/FN/211/DN]  
 KHUZWAYO, Zwi [KZN/MR/104/DN]  
 KLAAS, Michael Zolane [EC2096/97PLZ]  
 KOAHELA, Steven Lehlohonono [JB04067/01GTSOW]  
 KOZA, Mandla Aaron [KZN/MP/188/DN]  
 KUNENE, Bhhekamakhosi Paulos [KZN/ZJ/019/DN]  
 KWAPHUNA/SKONKWANA, Thamsanqa July [EC0341/96KWT]  
 LANGA, Aaron [KZN/SELF/089/DN]  
 LEDWABA, Stanley Moalusi [JB00413/01GTSOW]  
 LEDWABA, Thomas [JB01257/02PS]  
 LEKALAKALA, Lesiba Piet [JB05147/01ERKAT]  
 LENONG, Simon [JB00276/01GTSOW]  
 LENTSELA, Richard 'Bushy' [JB01404/03NW & 01403/03NW]  
 LENZI, Nzenze [JB04951/99OVE & EC2018/97UTA]  
 LEPOTHE, Patrick Thibedi [JB01004/02PS]  
 LERUTLA, Mathews Prompane [JB00787/02PS; JB02696/02PS]  
 LETSHABA, Petros Mokonyane [JB/05482/01ERKAT & JB03479/01ERKAT]  
 LUKHULENI, Tokie Willie [JB00998/02PS]  
 LUTYA, Thamsanqa [CT00606/FLA]  
 MAAKE, Moses Kalwane [JB05117/02NPPTB]  
 MABELE, Nkazimulo [KZN/KM/559/DN]  
 MABENA, Justice [JB01982/01GTSOW]  
 MADEBE, Thumani Joseph [CT00142/KIM]  
 MADISHA, Elias [JB02899/02NPPTB]  
 MADLEBE, Xoliswa [CT01028/SOU]  
 MADONDO, Antony Ndabingehle [KZN/NNN/181/PM]  
 MADONSELA, Joseph Memo [JB00958/01MPNEL]  
 MADUNA, Khathazile Wilson [EC2833/97UIT]  
 MAEGE, Siphso [KZN/SMB/122/FS]  
 MAFUMANA, Tolika [CT00226/FLA]  
 MAGUBANE, Sarah [KZN/NNN/015/DN]  
 MAGWACA, Popi Michael Vukile [EC0667/96PLZ]  
 MAHAYE, Phumlani [KZN/NNN/098/EM]  
 MAHLANGU, Daniel [JB02819/01MPWES]  
 MAHLANGU, Jim Msebenzi [JB02188/01MPMOU]  
 MAJOLA, Bhhekinkosi [KZN/NM/208/EM]  
 MAJORO, Benedict [JB05368/03VT]  
 MAKALENG, Johannes Sebotlana [JB05684/01ERKAT]  
 MAKETHA, Mashoalane Josiah [JB01630/03VT]  
 MAKHALIMA, Patrick Thembani Adam [EC2461/97NWC]  
 MAKHOBABA, Pius Zithulele [KZN/NM/226/PM]  
 MAKHUBO, Isaac Mbuti [JB00152/01 ERKAT]  
 MAKHUBU, Solomon [JB05712/01ERKAT]  
 MAKUYA, Nyatshisevhesingo [JB001129/02NPVEN]  
 MAKWELA, Samson Ezekiel aka William Jones [JB01620/02NPPTB & JB05488/02NPPTB]  
 MALATJI, Solomon Ntekuma aka Milo aka Mashego Mothusi,  
 MALEFAHLO, Simon [JB02921/01MPMOU]  
 MALINGA, Abraham Mdungeni [JB06483/01GTSOW]  
 MALOPE, Edward aka Joseph Mashiani [JB02900/01MPMOU]  
 MALULEKA, Charles [JB02425/01MPMOU]  
 MAMA, George Vumile [CT00622/OUT]  
 MANDELA, Aaron aka Zakariah Molotsi [EC1172/96PLZ & EC1387/96PLZ]

MANTENGU, Bheki [KZN/ZJ/432/MA]  
 MANYONTA, Nompumelelo Freda [EC0769/96PLZ]  
 MAPHOTO, Hendrick Malasela [JB05227/01GTSOW]  
 MAPONYA, Andrew [JB03947/02PS]  
 MAPUMULO, Reginald Sabelo aka Mayisela [JB01309/01GTSOW]  
 MARCH, David [JB01863/01GTTEM]  
 MASANGO, Oupa Petrus [JB02774/01MPMOU]  
 MASHABA, Fanyana Petrus [JB01497/01MPNEL]  
 MASHABELA, Jan Mantsho [JB04827/01MPNEL]  
 MASHEGO, Philemon Paul [JB03136/01ERKWA]  
 MASHELE, David Redimate [JB03339/02NPLTM & JB03340/02NPLT]  
 MASHILO, David [JB01946/02NPPTB & JB06494/02PS]  
 MASHIYA, Sonti Anna [KZN/FS/350/DN]  
 MASILELA, Joseph [JB02539/01MPMOU & JB02874/01MPNEL]  
 MASINGA, Ndondo Joseph [JB05759/03VT]  
 MASOLANE, Maphem [KZN/BN/004/FS]  
 MASUKU, Alpheus Zakhele [KZN/NZ/002/PM]  
 MATA, Patrick [EC2272/97ALB]  
 MATELA, Tsepo [JB00992/02PS]  
 MATHEBULA, Caleb [JB05750/03NWRUS]  
 MATHIBA, Johannes Lebogang [JB01854/03NW]  
 MATJUDA, Makwetsa Willington [JB04812/02NPTZA]  
 MATLADISA, Tsileng [JB03212/02NPLTM]  
 MATLOA, Andries [JB01029/02PS]  
 MATOBOLA, Mokone Jacob [JB05756/03VT]  
 MATSOLE-MOKWEBO, Germina Puleng [JB06418/01ERKAT]  
 MAVUKA, Nkosinathi Minti Sydney aka Colbert Kgomane [JB01280/01GTSOW]  
 MAXHAM, Sandile, John [EC2014/97UIT]  
 MAYISELA, Victor Sipho [JB02393/01MPNEL & JB05926/01GTSOW]  
 MAZIBUKO, Amos [KZN/ZJ/439/IX]  
 MAZIBUKO, Petros Nqobile [KZN/NN/106/PM]  
 MAZUNGULA, Sizwe Douglas [EC0098/96TSI]  
 MBALANE, Matwethu Sheshe [EC/2586/97ELN]  
 MBANJWA, Thandani Africa [KZN/NN/101/PM]  
 MBATHA, Zamokwakhwe Andries [JB02046/01GTSOW]  
 MBEJE, Bertha [KZN/ZJ/288/RI]  
 MBEKI, Monwabisi Kwanda [EC0308/96PLZ]  
 MBELE, Andrew Vusi [JB00457/01GTSOW]  
 MBELE, Mbundlu Enoch Nqumako [EC1790/97ETK]  
 MBEMBE, Derrick [KZN/LPM/113]  
 MBEMBE, Thobane [KZN/LPM/113]  
 MBETA, Kholekile Leslie [CT00126/FLA]  
 MBONGO, Sasa [KZN/FS/350/DN]  
 MBONGO, Aaron Mzondeki [JB05070/03VT]  
 MCHUNU, Edward Sibongakonke [KZN/NAM/071/DN]  
 MCHUNU, Elsie [KZN/SN/112/PM]  
 MCHUNU, Vincent Mazwi [KZN/NN/166/PM]  
 MCITSHA, Thami Gilbert [JB04578/01GTSOW]  
 MDAKA, Reckson Khayizeni [JB03336/02NPLTM]  
 MDAKANE, Nkosinathi Vincent [KZN/NN/334/DN]  
 MDLALOSE, Knowledge [KZN/NNN/040/DN]  
 MDLALOSE, Thamsanqa Blessing [KZN/NNN/034/DN]  
 MDLULI, Levy [JB03947/02PS]  
 MENDU, Alson Fikile [KZN/ZJ/317/PS]  
 MENDU, Fikile [KZN/HEM/007/PS]

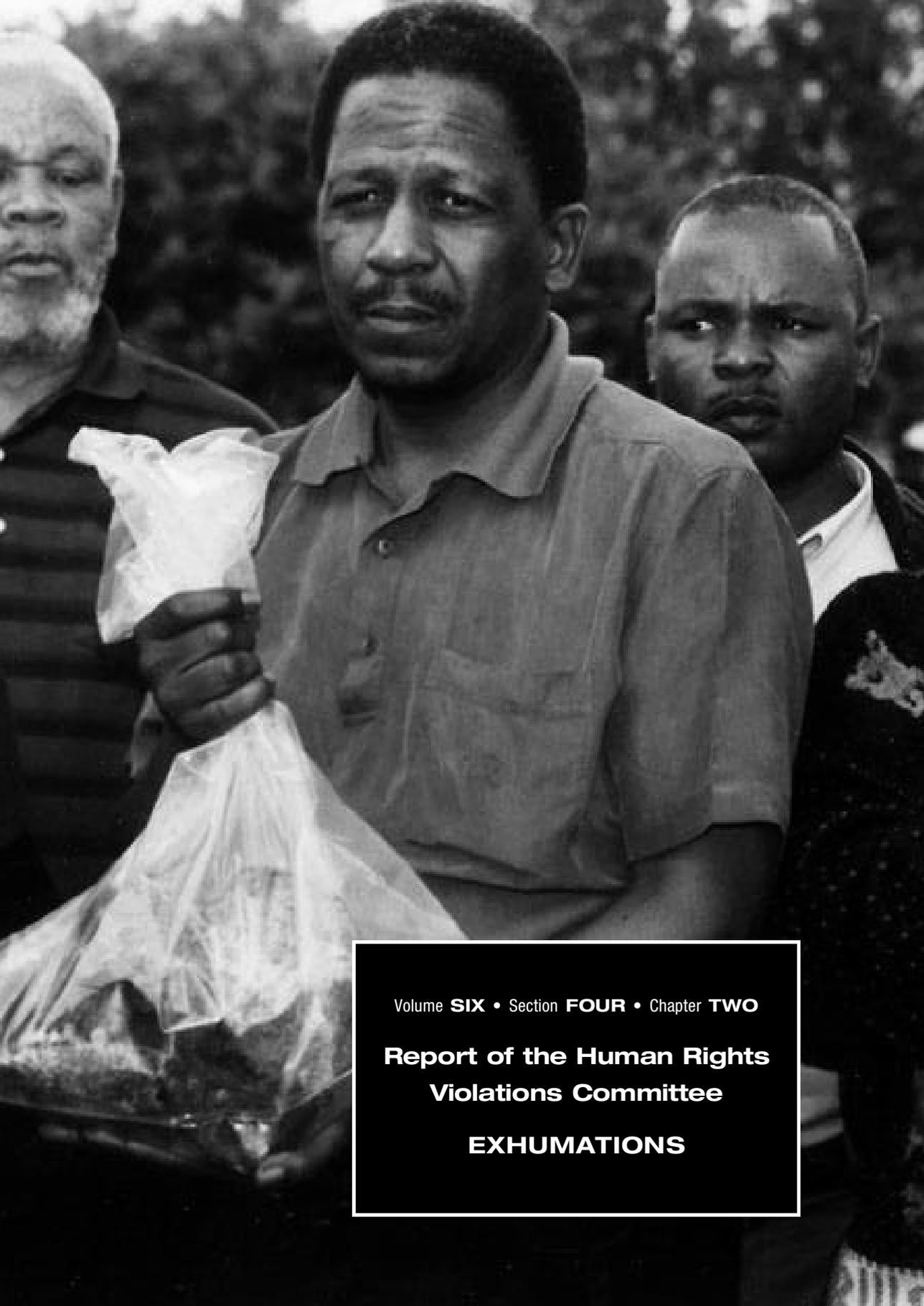
MESHACK, Eric 'Konkon' [JB1190/03NW]  
 MFEKA, Dumisani Daniel [KZN/GZ/010/PM]  
 MFETI, Phindile Baninawe [EC0020/96STK]  
 MGJIMI, Lucky [EC2638/97]  
 MGUGUNYEKA, David [CTO1038/FLA]  
 MHLONGO, Mbusi [KZN/MR/153/DN]  
 MHLONGO, Smanga [KZN/NN/012/DN]  
 MHLONGO, Tobias Bhekithemba [KZN/ZJ/416/MA]  
 MHLONGO, Vusumuzi [KZN/MR/251/EM]  
 MKALIPHI, Theophilus [KZN/MR/114/DN]  
 MKHIZE, Khehla [KZN/GM/083/DN]  
 MKHIZE, Mlungisi [KZN/NNN/270/PM]  
 MKHIZE, Siphwe Eugene 'Fana' [KZN/NM/113/DN]  
 MKHIZE, Zinhle Patience [KZN/NMS/037/MP]  
 MLAMBO, Bheki Emmanuel [JB00456/01GTSOW]  
 MLAMBO, Fanyane [KZN/HG/325/EM]  
 MLANDELWA, Sijumbo [EC0880/96ETK]  
 MMALEDIMO, Thomas Tumishi [JB01033/02NPPTB]  
 MMATLI, Andries [JB02692/02PS]  
 MNCONYWA, Mzwanpheli Livingston [JB04991/01ERKAT]  
 MNCWABE, David [KZN/ZJ/247/PM]  
 MNGADI, Beatrice [KZN/MG/001/DN]  
 MNGOMEZULU, Stephen [KZN/ARS/029/DN & KZN/SS/202/DN]  
 MNISI, Sylvester [JB00959/01MPNEL]  
 MNWANA, Thamsanqa Anthony [JB06003/01GTSOW]  
 MNYAKENI, Thomas [JB02203/01MPMOU]  
 MNYAZANA, Thembinkosi, Sindiswa [KZN/MR/143/NC]  
 MODISE, Goitsemodimo [JB03698/03NWRUS]  
 MOFOKENG, Matshediso [JB05732/03VT]  
 MOGAKI, Sidney Thabo aka Sydney [JB03091/01GTSOW]  
 MOGANO, Silas [JB01733/01GTTEM]  
 MOHALE, Oupa Jan [JB03323/02PS]  
 MOIMA, Mzokhona Nicholas [KZN/TCM/005/DN]  
 MOKABA, Daniel Madimetja [JB00532/02PS]  
 MOKGOTOE, Temba Joseph [JB01076/01GTSOW]  
 MOKOENA, Andrew aka Chicks [JB00672/02NPPTB]  
 MOKOENA, Daniel [JB00190/01GTSOW]  
 MOKOENA, Mathathe David [JB01640/03VT]  
 MOKOENA, Moeketsi [JB01575/01ERKAT]  
 MOLEBATSU, Fannie Solomon [JB00650/03WR]  
 MOLEFE, Mandla Innocent [KZN/PM/102/MP & KZN/PM/048/MP]  
 MOLOI, Johannes Moraleltlatsa 'Joe' [JB04576/01GTSOW]  
 MORUDU, Moss [JB00520/02PS]  
 MOSE, Luyanda Eric [EC0953/96/ELN]  
 MOSITO, Isaac Ike [JB06027/01GTSOW]  
 MOTAUNG, Ephraim [KZN/LIT/003/FS]  
 MOTEMA, Godfrey Mogege [KZN/ZJ/076/DN]  
 MOTHOA, Paulos Papa [JB03041/01MPMOU]  
 MOTLAFI, Isaac [JB02516/01MPMOU]  
 MOTSAPI, Michael [KZN/KWB/011/FS]  
 MOTSEPE, Moses Tefo [JB04960/01ERKAT]  
 MOTSETSE, Paul Sabata [JB05338/03WR]  
 MOYO, Mosima Milford aka Letsoala [JB06391/02NPPTB & JB06449/02NPPTB]  
 MPAHLA, Jomo [EC2222/97ELN]

MPELE, Jonas [JB04903/03VT]  
 MPONDO, Mlungisi Michael [CT00293/FLA]  
 MPUTANA, Matuso [EC2324/97[CTK]  
 MRWEBI, Tyhilekile Solomzi [EC2011/97STK]  
 MSIBI, Halifen Majene [JB04942/03VT]  
 MSIMANG, Siphwe Edgar aka Selby Hlatshwayo [JB04984/01ERKAT]  
 MSIMANGO, Eric Fana [JB00973/01GTSOW]  
 MSINDWANA, David Zolisa [CT03042/[KZN & EC0551/96ETK]  
 MSOMI, Sibusiso Paul [KZN/ZJ/003/DN]  
 MSOMI, Sicelo Gestophus a.k.a. Sporo Mangena [KZN/SANG/008/DN]  
 MTEBULE, Ignatius 'Iggy' aka 'Gab' [JB01411/02NPTZA, KZN/DJ/001/AM & JB0260/01/GTSOW]  
 MTETWA, Mandla Lucas [KZN/MS/0015/PS]  
 MTHEMBU, Dumisani Victor [KZN/TG/073/DN]  
 MTHEMBU, Nhlanhla Gerald [KZN/GZ/091/PM]  
 MTHEMBU, Thandanani Jacob [KZN/FS/411/DN]  
 MTHETHWA, Emmanuel [KZN/NNN/599/ST]  
 MTHETHWA, Michael [KZN/FN/133/DN]  
 MTHETHWA, Paulos Mandla [JB00948/01MPNEL]  
 MTHIMKHULU, John Mphekeleli [JB05577/03VT]  
 MTHINI, Mbali [KZN/SM/999/DN]  
 MTHIYA, Unknown [KZN/NNN/516/DN]  
 MTHOMBENI, Samuel Mhleka [JB02739/01MPMOU]  
 MTSHALI, David Mjikiza [JB00961/01MPNEL]  
 MTSHALI, Walter Buhlebuyeza [KZN/FS/404/PM]  
 MVUKA, Andrew Seuntjie [JB01930/03NW]  
 MVULANA, Sifiso [KZN/NN/144/PM]  
 MVULANE, Lindiwe [KZN/FS/350/DN]  
 MVUNYISWA, Ndlanganyana [EC1794/97ETK]  
 MWELASE, Dennis Mzikayifani [KZN/GM/094/DN]  
 MYENI, Bonginkosi [KZN/GS/014/PS]  
 MZELEMU, Ambrose Mathayi [KZN/SWN/001/PS]  
 MZIZI, Khep [KZN/GM/071/DN]  
 MZOBE, Bhekezakhe [KZN/NM/046/DN]  
 MZOLO, Andile [KZN/PMB/003/PM]  
 NARE, Phillip [JB05738/02PS]  
 NARE, Sannie [JB05738/02PS]  
 NCUBE, December [JB00303/01GTSOW]  
 NCUBE, Gideon [JB02408/01GTSOW]  
 NCUBE, Mac Makhathini [JB04064/01GTSOW]  
 NDABA, Aubrey Jabulani [KZN/GM/098/DN]  
 NDABA, Jabulani Aubrey [KZN/GZ/053/PM]  
 NDALA, Lucky Alfred [JB03954/01ERKWA]  
 NDALISO, Hector Sibulelo [CT00953/OUT]  
 NDELU, Mbandla [KZN/ZJ/383AM]  
 NDLOVANA, Christian Thomas [JB01227/02PS]  
 NDLOVU, Eulogius Trusty a.k.a. George Matlala [KZN/FS/373/DN]  
 NDLOVU, Handsome S [JB03470/02NPLTM]  
 NDLOVU, Kwenza [KZN/NG009/DN]  
 NDZOYIYANA, Madodana [EC/1659/97ETK]  
 NDZUNGA, Elvis Ngajuse [KZN/TG/065/DN]  
 NENE, Scelo [KZN/MZ/066/DN]  
 NGALOSHE, Edward Thobile [JB03439/03WR]  
 NGCEMU, Thabani [KZN/NNN/030/DN]  
 NGCOBO, Donald Siphwe [KZN/ZJ/021/DN]

NGCOBO, Muzwempi Cyprian [KZN/GM/031/DN]  
 NGELE, Luvuno Wellington [EC2425/97ETK]  
 NGEMA, Alpheus [JB06072/01ERKAT]  
 NGOBENI, Samuel Mdunwazi [JB06392/02NPTZA]  
 NGONO, Mbulelo Alfred [EC0330/96PLZ]  
 NGUBO, Accadius Busani Cedric [KZN/ NNN/289/PM]  
 NGWANYA, Themba Wilfred [KZN/NC/0007/DN]  
 NGWENYA, Buswabuphele Phillip [KZN/NNN/521/PM]  
 NGWENYA, Jobe [JB04083/99OVE]  
 NGWENYA, Shepherd [JB05745/01GTSOW]  
 NHELENGETHWA, Not specified [CTO2970/GAU]  
 NIKA, Maphi [EC2241/97ALB]  
 NIKELO, Senzile Christopher [KZN/TIS/042/KRS]  
 NKALANGA, Daniel [JB01494/01MPNEL]  
 NKHOLA, Nkosinathi [EC2620/97ELN]  
 NKIWANE, Mncedisi Helper [JB02648/01GTSOW]  
 NKONYANA, Samson Themba [JB03421/01ERKAT]  
 NKOSI, Carlton [JB06348/01ERKAT]  
 NKOSI, Mboneni Petrus [JB00951/01MPNEL]  
 NKOSI, Nombulelo Thelma [JB00175/01ERKAT]  
 NKOSI, Nomusa Ethel [KZN/NM/219/HA]  
 NKOSI, Samuel [JB03848/01MPWES]  
 NKWANYANA, Vusi [KZN/NNN/321/EM]  
 NODOSHA, Maqhilane Solamase [EC2064/97ETK]  
 NOJOKO, Moses Bongani [JB05185/01GTSOW]  
 NOMGQOKWANA, Brian 'Malawu' Miselo [EC0665/96PLZ]  
 NONDALA, Vuyo [EC/0232/96ALN]  
 NOT SPECIFIED, Sibongiseni [KZN/NNN/207/PS]  
 NSIBANDE, Syden aka Special [JB04084/01GTSOW]  
 NTANTISO, Sicelo [EC/0410/96ELN]  
 NTINGA, Boyi Sandile Ernest [KZN/PM/108/MP]  
 NTLOKO, Zola Alfred,[CTO1047/HEL]  
 NTOMBELA, Jafta Jabulani [KZN/ZJ/109/WE]  
 NTOMBELA, Nicholas [KZN/SS/265/EM]  
 NTULI, Abel Z [JB02542/01MPMOU]  
 NTULI, Phiwayinkosi [KZN/HG/1026/EM]  
 NTULINI, Mbuyiselo Patrick [CTO1355/HEL]  
 NXUMALO, Jabulani [KZN/NN/052/DN]  
 NXUMALO, Musa [KZN/NNN/393/EM]  
 NXUMALO, Sibongile [KZN/MP/412/MP]  
 NXUMALO, Sipiwe [KZN/NG/222/DN]  
 NYAKAZA, Michael Mzamadoda [JB00764/01GTTEM]  
 NYAWUZA, Jabulile [KZN/KM/522/DN]  
 NYAWUZA, Nicholas [KZN/NN/155PM]  
 NYAWUZA, Zanele [KZN/KM/522/DN]  
 NYEMBEZI, Mlise Hallock [EC2231/97STK & EC2740/97STK]  
 NZAMA, Pius Vusumuzi [KZN/SRM/001/DN]  
 NZAMA, Prince Norbert Nhlanhla [KZN/SRM/001/DN]  
 NZIMANDE, Beauty Thulile [KZN/NNN/122/PS]  
 NZIMANDE, Unknown baby [KZN/NN/253/PM]  
 PARKIES, Bongani [JB03184/01ERKAT]  
 PEBANE, Phakiso Samson [KZN/SS/305/DN]  
 PENYA, James Mongadi [JB00196/01GTSOW]  
 PENYANE, Zanyiwe [JB05346/01ERKAT]

PETERSEN, Hendrik [CTO40001/KIM]  
 PHADI, Jacob Japi [JB00412/03WR]  
 PHAKALITHA, Tshediso [CTO1533/KAR]  
 PHANDLE, Indi David aka Rubber [JB05781/01ERKAT]  
 PHEWA, Musa Sbhu [KZN/ZJ/148/DN]  
 PHIRI, Paulus Oupa [JB05028/03VT]  
 PIETERSEN, James 'Klonkies' [EC1150/96PLZ]  
 PULE, Thabo Stanley [JB05719/01GTSOW]  
 QANYA, Steven [JB05934/01GTSOW]  
 QHINGA, Mzwandile [KZN/SD/080/DN]  
 QWABE, Baban Aaron [KZN/SELF/064/DN]  
 RADEBE, Dumisani [KZN/MP/204/MP]  
 RADEBE, Jerry [JB01786/01GTTEM]  
 RADEBE, John Gibson [KZN/MP/025/BL]  
 RADEBE, Monto Samuel [JB01614/03VT]  
 RADEBE, Shedi Richard [JB05828/01ERKAT]  
 RADEBE, Sibongiseni Richard [KZN/GM/084/DN]  
 RAKABE, Kgashane Phillemon [JB00313/01GTTE]  
 RAKUBU, Joseph 'Joe' [CT00143/KIM]  
 RAMANTSI, Malusi James [JB00393/03WR]  
 RAMOKOKO, Ernest Justice [JB00327/01GTSOW]  
 RANYAOA, Kunyumane Arios aka Thulani Sibeko [JB005976/01 ERKWA & JB00160/01ERKWA]  
 RIKHOTSO, David [JB06379/01GTSOW]  
 S[ECHOGELA, Gaopalelwe Benjamin [JB04112/03NW]  
 SABATHA, Nzimadze [JB0590/01MPNEL]  
 SCOTT, Nkululeko Glen [EC2806/97KAR]  
 SEDIBANA, Simon Mafadi [JB03518/02NPPTB]  
 SELEPE, Metsheki Ishmael [KZN/TG/060/DN]  
 SEMETHE, Francis Mdlafetsane [JB05154/01ERKAT]  
 SENNA, Morailwa Iqbad [JB05498/03NWRUS]  
 SEPOTOKELE, Benjamin Motswagole [JB02767/03WR]  
 SETHEBE, Lewis Ndolo [JB01250/01GTSOW]  
 SHABALALA, Jeffrey Siphon [KZN/GM/061/DN]  
 SHABALALA, Siboniso [JB00189/01GTSOW]  
 SHABANGU, George [JB02849/01 & JB04141/02PS]  
 SHABANGU, Lucas David [JB02205/01MPMOU & JB04778/01MPMOU]  
 SHANDU, unspecified [KZN/WW/334/DN]  
 SHANGASE, Fano [KZN/NG/277/MP]  
 SHANGE, Alpheous Magwegwe [KZN/MR/157/DN]  
 SHANGE, Thulani Doctor [JB00506/01ERTEM]  
 SHANGE, Vincent Lucky [JB00506/01ERTEM]  
 SHIBURI / SHIVURI Elias [JB04071/01GTSOW]  
 SHIRINDA, Lawrence [JB03337/02NPTZA]  
 SHIRINDA, Phineas [JB06393/02NPPTB]  
 SHOZI, Doda Elias [KZN/FN/130/DN]  
 SHOZI, Mhawukelwa Nkosiyabo [KZN/NM/290/EM]  
 SIBANGO, Pulwana Leonard [CT00711/GAU]  
 SIBIYA, Eunice [KZN/NNN/207/PS]  
 SIBUKU, Molefe aka Thuso Lesupa [EC2246/97ALN]  
 SIKHAFUNGANA Khanyiso [EC2509/97ETK]  
 SIKHAKHANE, Maswampi [KZN/GSN/178/MP]  
 SILANGWE, Mhletywa [EC2152/97ETK]  
 SIMELANE, Mbapha David [JB05730/01ERKWA]  
 SIMELANE, Nokuthula Aurelia [JB00280/01MPWES]

SIMELANE, Thembinkosi Vincent [KZN/KM/512/DN]  
 SITHEBE, Bongani Enoch [JB05881/03VT]  
 SITHOLE, Innocent [KZN/NN/095/PM]  
 SITYATA, Similo Sizwe Matolweni [EC0579/97ELN & EC2193/97STK]  
 SKOSANA, Ephraim Baba [KZN/SMB/126/FS]  
 SKOSANA, Jan Nara [JB02555/01MPMOU]  
 SMANGA, Sthembile [JB04025/01ERKAT]  
 SOGIBA, Zamubuntu [CT03706/HEL]  
 SONO, Lolo Corlette [JB00188/01GTSOW]  
 SONQISHE, Thembe Wilmott [CT00965/[ECA]  
 SOSIBO, Maxwell Mbhekeni [KZN/NNN/557/DN]  
 SOSIBO, Nhlanhla [KZN/NNN/459/RI]  
 SOTHIYA, Kapsensie Alfred [KZN/ZJ/036/DN & KZN/NCB/021/DN]  
 TANANA, Xolile Matthews [EC0491/96ELN]  
 THABANE, Nqabe Joseph [JB05823/01ERKAT]  
 THANJEKWAYO, Barnabas Nsikelelo [JB05469/01ERKAT]  
 THOSAGO, Solomon Phaladi [JB01945/02NPPTB]  
 THOTHOBOLO, Kenneth Itumeleng [JB06386/01GTSOW]  
 THUSI, Mbeki Zipred [JB04897/01GTSOW]  
 THUSI, Mkeyi Alpheus [KZN/NCB/006/DN]  
 TIYO, Lwazi [CT00693/WIN]  
 TLHAPI, Ramatua Nicholas aka Boikie [JB01185/03NW, JB0118/03NW, JB01187/03NW, JB01452/03NW]  
 TOTO, Fexie Sipiwo [CT00540/GEO]  
 TSELANE, Motlogelwa [JB06119/03NWRUS]  
 TSHABALALA, Amos Buti [JB00314/01ERKAT & JB02318/01ERTEM]  
 TSHABALALA, Sibusiso Mcmillan (nickname Morgan) [JB02879/01GTSOW]  
 TSHANGISA, Miniyakhe [KZN/MR/242/WE]  
 TSITIRO, Jeremiah [JB03049/01ERKWA]  
 TSOTETSI, Samuel Maloyo [JB03954/01ERKWA]  
 TSOTSOTSO, Aarone Mokhele [KZN/HG/002/FS]  
 TUKU, Edward [CTO9003]  
 TWALA, Joseph Nkani [JB04667/01ERKAT]  
 TWALO, Gwaza Duckworth [EC0128/96KWT]  
 TYULU, Tamsanqa Abraham [EC0174/96UIT]  
 UNKNOWN, Petrus [JB01704/03NW]  
 XABA, Dumisani Norman [JB06308/01ERKAT]  
 XABA, Joseph Mbonankulu [JB05071/01ERKAT]  
 XULU, Joel Msizi [KZN/NN/050/DN]  
 XULU, Mkhombiseni Herron [CTO5013/[KZN]  
 ZACA, Nhlomla [KZN/FN/142/DN]  
 ZENGELE, Willie Motlalentoa [JB01157/03VT]  
 ZIKALALA, Zakhele Lawrence [JB04502/03VT]  
 ZIQUBU, Dingane Robert Thulani [KZN/NN/302/DN]  
 ZITHA, Vusi [KZN/NNN/065/DN]  
 ZOKUFA, Milton [JB01897/03WR]  
 ZONDI, Mbazo [KZN/FN/113/DN]  
 ZULU, Abednigo Mfaniya [JB05105/03NWRUS]  
 ZULU, David Mbuti [JB03377/01ERKAT]  
 ZUMA, Shaka [KZN/SN/169/DN & SN/114/PM]  
 ZWANE, Kuki [JB05784/01GTSWO]  
 ZWANE, Not specified [CT02918/[KZN]  
 ZWANE, Zanele [KZN/GM/074/DN]  
 ZWINGE, Tayitile [EC2341/97[CTK]



Volume **SIX** • Section **FOUR** • Chapter **TWO**

**Report of the Human Rights  
Violations Committee**

**EXHUMATIONS**

# Exhumations

## ■ INTRODUCTION

1. The Truth and Reconciliation Commission (the Commission) undertook a number of exhumations with the aim of providing healing to the families of victims. When successful, exhumations allowed families to retrieve the last physical remains of their loved ones, so that they could bury them according to ceremonies of their own choice. In this way, many families could begin the process putting to rest the painful questions and memories that had haunted them for so long.

### **The cases of Barney Richard Molokoane, Victor Lunga Khayiyana and Vincent Seleke**

2. One of these cases involved the exhumation of the remains of three MK operatives who had been shot dead near Piet Retief in the Transvaal on 28 November 1985.
3. Mr Barney Richard Molokoane, Mr Victor Lunga Khayiyana and Mr Vincent Sekete were killed while on a Special Operations sabotage mission, and were buried as paupers. Following an investigation carried out by the Commission's Johannesburg office, their graves were traced and the remains exhumed. Their families attended the exhumation and were able to rebury them. The Molokoane and the Khayiyana families had suffered other losses of family members during the political conflict, and these exhumations provided some relief.<sup>21</sup>

### **The case of Phila Portia Ndwandwe**

4. The remains of Ms Phila Portia Ndwandwe, an MK operative known as Zandile, were exhumed from Elandskop Farm in KwaZulu-Natal on 12 March 1997.
5. Members of the Port Natal Security Branch had abducted Ms Ndwandwe from Swaziland in October 1988. After a failed attempt to recruit her, Ms Ndwandwe was shot dead and secretly buried. Her whereabouts remained a mystery. Indeed, many believed that she had defected to the security forces. This painful

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<sup>21</sup> See Volume Two, Chapter Six, p. 549.

suspicion was dispelled when amnesty applications from her killers revealed the truth about her disappearance and led Commission investigators to her grave.

6. Forensic examination of her remains revealed that she had been shot in the head execution-style, probably while kneeling. Following press reports on the exhumation, Ms Ndwandwe's young son was united with his grandparents for the first time.<sup>22</sup>

### **The case of Ntombikayise Priscilla Khubeka**

7. Six members of the Terrorism Investigation Section of the Port Natal Security Branch and two C1/Vlakplaas operatives applied for amnesty for their role in the abduction, death and subsequent disposal of the body of Ms Ntombikayise Priscilla Ngcobo (née Khubeka) in April or May 1987.
8. Ms Khubeka lived in KwaMashu, a township to the north of Durban, and was suspected of acting in a co-ordinating capacity between external and internal units of MK. She was allegedly responsible for the storage of weaponry, organising safe-houses and collecting intelligence on possible MK targets.
9. Two C1/Vlakplaas askaris, Xola Frank Mbane and one Dube, part of a C1 team under the command of Captain Adriaan David Baker working with the Port Natal Security Branch, were tasked with making contact with her. This they successfully did. Mr Mbane, who did not apply for amnesty, alleged that their infiltration efforts resulted in the entrapment and killing of three MK combatants. This was denied by all applicants.
10. In April or May, possibly two months after the operation had commenced, Mr Mbane drove Ms Khubeka to Battery Beach. She was abducted by the Port Natal team, blindfolded, possibly bound and taken to an abandoned shooting range at Winkelspruit, south of Durban. Still blindfolded, she was then subjected to interrogation by a team consisting of Colonel Andy Taylor, Captain Hentie Botha, Sergeant Laurie Wasserman, Sergeant Cassie van der Westhuizen, Joe Coetzer and Warrant Officer 'Bossie' Basson.
11. During the interrogation, which was conducted largely in Zulu by Colonel Taylor, he struck Ms Khubeka across the back with a sjambok. According to Captain

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<sup>22</sup> See Volume Two, Chapter Six, pp. 543,545.

Botha, this was not a severe assault but intended to convey the gravity of the situation and persuade her to co-operate with them:

CHAIRPERSON: *Did he hit her hard with this sjambok?*

MR BOTHA: *Chairperson, I would say yes, he hit her hard; but the blows with the sjambok were not the type of blows which would be dealt to grievously injure the person. It was to indicate, 'I'm serious with what I'm asking you to do now' ...*

MR LAX: *How could he hit her hard and not hurt her?*

MR BOTHA: *I'm trying to describe that the degree of the blow was not to the extent that it was taken out and hit hard in comparison to a form of torture. It was more to indicate: 'I'm hitting you in order to prove a serious point.'*

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

13. Botha and other applicants testified that, during the course of the interrogation, Ms Khubeka agreed to co-operate with them, but that:

*She then suddenly began to gasp for breath, grabbed her chest and fell over. While her body was shaking, she urinated and within seconds lay dead still. I was frightened and someone went to fetch water outside and poured it on her because we thought that she had fainted. She did not respond to the water which I splashed on her face. She had no pulse rate and W/O Basson brought a mirror and held it in front of her mouth. There was no breath. I realised that she was dead, possibly from a heart attack. Khubeka was physically a big woman and in my opinion overweight.*

14. According to the applicants, they then decided to dump her body in the vicinity of her home and tasked Sergeants Wasserman and Salman Gerhardus du Preez to do this. This decision was informed by the fact that she had died of natural causes and they thus expected that no foul play would be indicated by a post mortem examination. Inexplicably, however, her body was dumped that night somewhere near the Bhambayi informal settlement, some distance away from her home.

15. Later Captain Botha established that her family was unaware of her death and appeared to believe that she had gone into exile. It was subsequently rumoured that she had left the country for Mozambique because of the attentions of the Security Branch.
16. However, the version given by the applicants was seriously challenged when the Commission's Investigative Unit exhumed remains believed to be Ms Kubeka's from a pauper's grave at Charlottedale Cemetery, Stanger. After the exhumation, DSR Naidoo of the SAP Medico-Legal laboratory conducted a post-mortem examination of the remains, concluding that they matched those of Ntombi Khubeka. In addition, a spent 7.65 bullet fell from the skull, indicating that she had been shot in the head. This was contrary to the perpetrators' account of her death.
17. An attempt to use DNA testing from samples of bone and teeth failed as these had deteriorated and could not be used for DNA typing. The skull was then sent to Dr P Venezis, Regius Professor of Forensic Medicine and Science and Head of Department at the University of Glasgow, a recognised authority on a facial identification technique that entails the use of video superimposition.
18. Dr Venezis concluded that the skull-to-photo superimposition he carried out revealed an excellent match in all respects with the photographs examined.  
*I am satisfied that there is an excellent match between the photographs examined and the skull in question and I am of the view therefore that it is highly likely that the skull is part of the remains of Ntombi Kubheka.*
19. The applicants challenged these findings and demanded that another expert, based at the SAPS Forensic Science Laboratory in Pretoria, examine the skull.
20. Sergeant TM Briers of this laboratory concluded that:  
  
All the above landmarks have been taken into consideration and it is found that the skull and face on both photographs are consistent with each other. No contradictions were found.
21. The applicants did not challenge Brier's conclusions, although they continued to contest the results of the investigation. In reviewing the evidence, the Amnesty Committee found the forensic evidence 'compelling':

*What is striking in the final analysis is that, in our view, all the above aspects taken together point to the inescapable conclusion that the body exhumed from the grave at Charlottedale Cemetery, Stanger, is in fact that of the deceased, Ntombikayise Priscilla Khubeka.*

22. Applicants Botha, Du Preez, Wasserman and Van der Westhuizen were refused amnesty for failing to make full disclosure. Applicants Radebe and Baker, who had not been present during the interrogation or involved in the disposal of the body, were granted amnesty for her abduction.<sup>23</sup>

## **WORK ON EXHUMATIONS AFTER 1998**

23. The Commission received hundreds of requests from families requesting that it trace and exhume the bodies of loved ones. Unfortunately it was not possible to deal with them all: once the Commission's operational period came to an end, it was not permitted by law to continue with this process.
24. Given the fact that the families of victims were expressing a clear need for continued exhumations, the Commission undertook to discuss future exhumations with the Minister of Justice and the Inter-Ministerial Committee established to deal with matters relating to the Commission. At the end of 1998, the Commission advised then Minister of Justice and the Inter-Ministerial committee that many more families were requesting exhumations. In a number of instances, the requests related to the return of remains from exile and places outside the country. The Commission also advised the Minister that any future exhumation programme would require the establishment of clear guidelines and parameters to ensure its success.
25. One of the outcomes of the consultation was a commitment by the Commission to provide the Ministry of Justice and the Inter-Ministerial committee with a comprehensive report on exhumations already carried out, in order to assist government in making a decision on how it would deal with the matter. This was one of the most significant recommendations made in the Reparation and Rehabilitation Committee's reparation policy.

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<sup>23</sup> The Amnesty Committee made no finding on Applicant Roelof Visagie as he was outside South Africa at the time of the hearing and did thus not give evidence. Given the disputed evidence, the Committee felt it was not able to dispose of his application in chambers.

26. The compilation of a comprehensive report on exhumations was one of the major tasks assigned to the Human Rights Violations (HRV) Committee in the period after the handing over of the Commission's Final Report in October 1998.
27. The HRV Commissioner put a task team in place to produce this report. The report was intended to deal not only with exhumations that had been carried out, but also to allow the Commission to focus on guidelines and criteria for future exhumations. This process was facilitated at a management level by the Commission's acting CEO, who made the necessary resources available.
28. A further issue that had to be considered was that the Commission had, in the early part of 1998, carried out an exhumation at Boshhoek farm near Rustenburg in the Transvaal, which rendered up fifteen bodies instead of the two that had been expected. While the two bodies identified as activists had been handed over to families for reburial, the remaining thirteen needed to be identified so that arrangements for reburial could be made. As an interim measure, the Commission had contracted with Saffas Undertakers to hold the remaining thirteen bodies until such time as the Commission took a decision on how to finalise the matter.
29. The Commission decided that it would be proper to perform a forensic examination on the bodies before taking any decision on dealing with reburial. The matter was placed before the Amnesty Committee which approved the proposed forensic examination. The HRV Commissioner was able to obtain the assistance of the Argentine Forensic Anthropology Team (EAAF), who agreed to perform the forensic tests.
30. Using the facilities of the University of the Witwatersrand, the two EAAF members conducted forensic examinations and were able to establish conclusively that the thirteen bodies exhumed were deceased hospital patients and not political activists at all. Their report is available and is fairly conclusive in this respect.<sup>24</sup> This raised concerns regarding the exhumation procedures adopted in certain cases and was one of the reasons a more detailed audit was then undertaken.
31. The HRV Commissioner set up a task team to conduct a complete audit of all exhumations conducted by the Commission. The team was made up of the HRV Commissioner, the former Commissioner in charge of the Investigation Unit (IU), the former IU director and two researchers.

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<sup>24</sup> The Commission extends its thanks to the EAAF for its generous assistance, and to the University of Witwatersrand's Department of Anatomy for making both facilities and personnel available.

32. A review of each of the exhumation case files was conducted in order to confirm the correctness and integrity of the process. All existing documentation relating to exhumations was collected, collated and analysed.
33. Investigators from the Johannesburg office and KwaZulu-Natal provided the task team with the case files. In addition, the chief investigator in charge of exhumations in the Johannesburg office gave the task team a verbal briefing and handed over all case folders, folders containing working notes and reports, various post-mortem and inquest documents, lists of MK deaths supplied by the ANC and a Security Branch photograph album with an index. This was to form the basis of the report.
34. The compilation of the report and dealing with the enquiries that were generated took a year. In the course of that year, the task team scrutinised each individual exhumation case. The task team also dealt with the following issues:
  - a An incident list of MK persons killed in combat, ambush or arrest situations was compiled, using a range of documentary sources. This was essential in order to link those exhumed with specific incidents – thus locating the correct post-mortem, inquest and gravesite documentation.
  - b Additional mortuary, inquest, photographic and fingerprinting records were sought and obtained.
  - c Statements and photographic albums were obtained from the SAPS Forensic Unit that had attended certain of the exhumations.
  - d Contact was made with former MK operatives and commanders who had survived and had information about incidents in which those exhumed had died.
35. Information was obtained according to the internationally accepted exhumation procedures used by bodies such as the United Nations.
36. The IU Director canvassed each exhumation case with the various investigators who had been involved with the exhumations.

## **Evaluation**

37. The task team established that the Commission had carried out at least fifty exhumations throughout the country. It also established that a number of exhumations had not been carried out, due to the expiry of the Commission's operational mandate.

38. The task team also established that the methodology followed differed from region to region. In KwaZulu-Natal, the process included the services of a forensic expert and pathologist, who participated in the exhumations and conducted forensic examinations of the remains.
39. Exhumations carried out in Johannesburg placed a greater emphasis on returning the bodies to the families as quickly as possible. Autopsies were not performed due to resistance from families in some cases.
40. The Johannesburg unit also made greater use of the South African Police Services (SAPS), including the SAPS video and canine sniffer units.
41. The KwaZulu-Natal unit relied to a large extent on the pointing out of grave sites by amnesty applicants. Many of the exhumations were carried out at the 'safe houses' of the former Security Branch, where certain activists who had been abducted were interrogated and killed.
42. The sites where bodies were believed to have been buried were cordoned off, and a team for a specialist undertaker's firm would test the soil for signs of recent disturbance and demarcate an area for excavation. This unit also relied on police sniffer dogs to seek out the presence of lime below the soil surface, as lime was often poured over the bodies to hasten their decomposition.
43. Once the correct spot had been located, a pathologist would supervise the removal of soil until the body was located. The pathologist would enter the grave and remove the body – bone by bone. In many cases, the flesh had disintegrated. The presence of the pathologist during the exhumation process ensured that the integrity of the site was protected.
44. The Johannesburg unit focussed its attention on a number of disappearance cases that had been reported to the Commission, involving Umkhonto we Sizwe (MK) operatives who had disappeared or lost their lives, mainly near the borders of South Africa with Lesotho, Swaziland, Zimbabwe and Botswana.
45. MK operatives in a number of incidents had been intercepted while travelling in and out of the country. Many had been killed in shoot-outs with the police or the army. In a number of cases, operatives were abducted and attempts were made to turn them into askaris. Those who did not co-operate with the police were brutally killed and often buried in secret locations or in unnamed graves in cemeteries.

## **The case of Dikgope ‘Magic Bones’ Madi**

46. The difficulties attending the identification process before an exhumation are illustrated by the case of Dikgope ‘Magic Bones’ Madi, one of the cases dealt with by the Johannesburg unit.
47. The case involved three MK combatants who had been killed at Tshipise, Venda, in August 1983. The family of one of the combatants, Mr Patrick Motswaletswale, contacted the Ministry of Safety and Security to ask them to investigate the incident. The Ministry, which passed the matter on to the Commission’s Johannesburg office, had established that the remaining two combatants were Mr Humbulani Mulaudzi and Mr Andrew Madi. While they had managed to trace the family of the former, the only information they had about Mr Madi was that he was originally from Alexandra. The Ministry of Safety and Security, via their Pietersburg office, further established that the three operatives had been buried at Mbaleni in Sibasa and that the location of their graves was known.
48. The Commission was requested to establish the identity of Andrew Madi and to carry out the necessary exhumations. The investigation identified Andrew Madi as Andrew ‘Magic Bones’ Madi, and his body and that of Motswaletswale were exhumed. According to the investigator, identification was made by an MK commander (now deceased) who had been based in Zimbabwe at the time.
49. The case illustrates some of the numerous difficulties and contradictions the task team encountered while auditing exhumation cases
50. The ANC submission to the Commission, which listed deaths in exile, contained no record of an Andrew Madi. However, it did list an Andrew Madi as having been killed by ‘enemy forces’ in Zimbabwe in 1979. No record of Andrew Madi or Madi could be found on the additional lists of MK combatant deaths obtained from ANC headquarters at Shell House, although both contained the names of Patrick Motswaletswale from Sibasa and an MK Basil Zulu as having been killed in 1983. One of the lists indicated that the incident had occurred in Venda sometime in August 1983. There was no reference to a third person, further complicating the matter.
51. The task team located an HRV statement submitted by Mr Matsutse Elias Madi (JB05983/01MPPIT) from Alexandra, Johannesburg. Mr Madi told the Commission

that, on 28 August 1978, his son Dikgope Molefe 'Magic Bones' Madi had told him that a friend had promised to take him across the border into exile. Although the deponent was suspicious and warned his son not to go, Dikgope went out that evening and never returned. The deponent reported the disappearance to the police but was told to search for his son himself. He returned home, 'my heart bleeding'.

52. Some three to four years later, he received an anonymous letter saying that Dikgope was in Tanzania. He heard nothing further until after the unbanning of organisations in 1990. At this stage, another son, Ephraim, informed him about a woman, Ms Lovinest Nyerende from Malawi, who claimed to be Dikgope's girlfriend. According to Ms Nyerende, she had last seen Dikgope in 1978 in Tanzania. He had then gone to Zimbabwe to fetch other exiles, but had never returned to Tanzania. She later heard rumours that he was dead. In July 1992, two ANC officials informed Mr Madi that his son had died in the war in Zimbabwe.
53. This version appeared to confirm the information contained in the ANC submission that Andrew Madi had been killed in Zimbabwe in 1979, thus suggesting that Andrew Madi could not be the same person as the Andrew Mandi who was killed in the Venda incident in 1983. However, the names were virtually identical and there was a strong coincidence in the fact that both were said to have come from Alexandra.
54. Two further HRV statements made to the Commission confirmed that there were indeed three people killed in the Venda incident, but neither shed light on the identity of the third person. Mr Mavhunga Abram Mulaudzi (JB01268/02NPVD) made a statement regarding the death of his son, Humbelani Elvis Tshifhiwa Mulaudzi, at Tshipise in 1983. According to the statement, Mr Mulaudzi identified the body of his son and one of the remaining two as one Mongqretswari (presumably Motswaletswale), also from Venda.
55. Ms Jane Denga (JB01414/02NPVEN) made a statement to the Commission about the torture of her husband, Alfred Mafhungo Denga, who was detained on 4 November 1983 and taken to Masisi Police Station in Mutale. Her husband had been involved in the transportation of three MK operatives, one of whom was a Mutswaletswale from Thohoyandou.

56. Additional information in other records<sup>25</sup> indicated that Mr Denga had subsequently given evidence in the trial of several persons charged with harbouring MK operatives. Denga had told the court that he had been introduced to three MK operatives in November 1981 and had assisted in transporting them on numerous occasions. Evidence to the court by the second in command of Venda Security Branch was that one of the three men had been killed in a joint SAP and Venda Defence Force operation on 29 August 1983.
57. These statements confirmed the incident of August 1983 and, notwithstanding the apparent evidence by the second in command of the Venda Security Branch that only one person had been killed, the identities of Mulaudzi and Motswaletswale. However, neither cast light on the identity of the third victim.
58. Finally an MK operative who had been based in Zimbabwe was able to confirm the identity of the third victim as Dikgope Andrew 'Magic Bones' Madi. This operative, who had been based near Beit Bridge, had fought with ZAPU<sup>26</sup> forces in the late 1970s. In 1983 he infiltrated South Africa but was detained shortly thereafter. While detained, he was taken to identify the bodies of three MK operatives killed in August 1983. He positively identified one as a person he knew as 'Magic Bones.' According to him, he had known 'Magic Bones' well as they had both been in Zimbabwe and had also played soccer together.

## **Outcome of audit**

59. The task team established that more than 60 per cent of the exhumations had been adequately performed by the units in KwaZulu-Natal and Johannesburg.
60. However, it also established that there were certain serious corroboration problems in 20 per cent of the cases. In the case of the remaining 20 per cent, additional corroboration was required and no determination could yet be made on the accuracy of the exhumations.
61. On the basis of the EAAF report, the task team also determined that the thirteen bodies exhumed from the Boshhoek Farm were not political cases, and the Commission arranged for their re-interment.

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<sup>25</sup> Focus 53, p. 4.

<sup>26</sup> Zimbabwe African People's Union.

62. The task team also established that a further fifteen exhumation cases had yet to be dealt with by the Commission.

## **OVERVIEW OF PROBLEMS EXPERIENCED IN THE EXHUMATION PROCESS**

63. A comprehensive report of the task team's audit will be handed to the Minister of Justice when the Codicil is handed over in March 2003.
64. The task team's report highlighted the following problems:

### **Inadequate investigations**

65. In a number of cases, gravesite identifications were done without first corroborating the incidents concerned. Without clearly establishing the date and place of an incident, gravesite identification becomes tentative at best. Although many documents have been destroyed by the Security Branch, certain state records often remain. These include occurrence books, inquest registers, state mortuary registers, and municipal burial orders.
66. The Johannesburg IU unit established that, in the former Transvaal, those exhumed were formally buried in cemeteries as paupers. They thus passed through a number of bureaucratic processes, including the records of the judiciary, local authorities and undertakers.
67. In certain cases, these corroborative sources were not consulted. Where they were obtained, they were not always properly correlated, leading to potential errors in the location of cemeteries and grave sites and rendering the identification process questionable.
68. Further, there was a range of secondary sources that could have been used to corroborate incidents, such as contemporaneous newspaper reports and NGO publications.

### **Absence of forensic examination**

69. In the Eastern Cape and KwaZulu-Natal exhumations, forensic examinations of the skeletal remains were carefully conducted to ascertain age, sex, cause of

death and so on. However, the exhumations carried out on in the former Transvaal had not been subjected to forensic appraisal, making identification uncertain.

70. There was also insufficient and sometimes no pre-mortem investigation. The forensic examination carried out on the 'Boshoek remains' sharply highlighted this issue. Families and fellow-combatants could have provided accurate details of age, physical characteristics and photographs. This was done in very few cases.
71. In addition, the absence of a professional exhumation procedure probably resulted in the loss or destruction of forensic evidence. The absence of forensic examination also meant that, in cases where the version provided by the security forces is contested, no evidence exists to challenge their version of events. This has consequences for the possibility of future prosecutions where proper forensic evidence would be required.
72. While the SAPS Forensic Unit was used in certain cases, the task team discovered that they had only participated in the digging and in identification.
73. There was also a failure to make a photographic record of the exhumations and remains. Only the SAPS Forensic Unit photographs are available. Regrettably, they did not generally photograph individual remains.

## **Documentation**

74. The task team also established that documentation was handled poorly by the Johannesburg unit.

## **Over-reliance on the ANC lists and information**

75. The Johannesburg unit placed a great deal of reliance on two lists that the ANC gave to the Commission. These lists detailed the names of MK operatives who had died inside South Africa. The first lists only the name of the operative and the date and place of death, where known. The second list contains real names, combat MK names, place of origin and place and date of death, where known.
76. In many cases, there were several serious discrepancies regarding place and date of death between the two lists. The lists were defective in a number of instances, and this had an impact on the investigations carried out by this unit.

## **Failure to make use of the Commission's database**

77. The Johannesburg unit did not appear to have used the Commission's database to cross-reference its work, nor did it access the HRV statements in the possession of the Commission, many of which contained valuable corroborative information.

## **Inadequate consultation with MK commanders/operatives**

78. Although the unit did, in certain instances, consult with relevant MK personnel and/or commanders, consultation should have been done in every case to establish the nature of the mission and to confirm the identities of the operatives involved. Consequently, identities were sometimes assigned to the deceased without proper corroboration from commanders based inside South Africa or neighbouring countries.

## **Problems in identification**

79. In the course of its audit, the task team discovered that it was extremely difficult to make positive identifications. One example of such a difficulty is the case of Richard 'Bushy' Lentsela. This case also demonstrates the considerable difficulty encountered in attempting to establish the fate of Mr Lentsela, and how important it is to corroborate each piece of information received.

## **The case of Richard 'Bushy' Lentsela**

80. Richard 'Bushy' Lentsela disappeared from Schweizer-Reneke during the mid-1980s.
81. According to one of two HRV statements received from family members, it was believed that Mr Lentsela was an MK operative who was killed with three others in an incident near Warrenton. The statement also referred to a community pamphlet that circulated in the Schweizer-Reneke area during 1986, listing the identities of the four persons killed in this incident. This information provided the first line of enquiry.
82. Mr Lentsela's name was not contained in the ANC submission, nor was it on either of the lists of MK combatant deaths. Various sources confirmed that an incident had occurred near Warrenton on 13 December 1986.<sup>27</sup> However, all of these sources indicated that one person, and not four, had been killed.

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<sup>27</sup> Terrorism Research Centre; SAP documents; CIS list of MK deaths in combat.

83. Two sources identified the MK operative shot dead as Zonwabele Livingstone Ntlokwana, also known as Lungile, whose name is recorded on the MK lists. The sources indicate that Mr Ntlokwana died on an unknown date in 1987, although one of the lists records the place of death not as Warrenton but Mafikeng. Despite this contradictory information, the identity of the person killed in the Warrenton incident was established as Livingstone Ntlokwana (on the basis of an HRV statement by the Ntlokwana family and an entry in the Warrenton mortuary register). This ruled out the possibility that Mr Lentsela had been killed in this incident.
84. Former activists in the Huhudi-Vryburg-Schweizer-Reneke area were contacted with a view to locating the pamphlet referred to in the HRV statement, said to contain photographs of four persons, including 'Bushy' Lentsela. All three former activists spoken to believed he had been killed in the Warrenton incident, although one indicated that he had heard that Lentsela had been killed in a skirmish elsewhere in the Transvaal. One of the activists traced a copy of the pamphlet, which turned out to have been issued by the SAP. It contained the photographs of four activists wanted by the SAP, one of whom was indeed 'Bushy' Lentsela. While this confirmed police interest in Mr Lentsela, it provided no clue as to his fate.
85. One of the Security Branch photograph albums in the Commission's possession contained photographs of suspected MK combatants, including a photograph of Mr Lentsela. The photograph had been crossed out and his name cancelled on the index. The 'cancellation' of an activist from the album generally indicated that the person concerned was no longer of interest to the Security Branch, because s/he had either died or been arrested or recruited. This suggested that sometime after the pamphlet had been issued, the Security Branch lost interest in Mr Lentsela.
86. Further investigation and research indicated that 'Bushy' Lentsela had, in all probability, been killed near Nietverdiend in the Western Transvaal. The incident took place on 25 June 1986, when a group of four MK operatives entering from Botswana were shot dead. This incident is confirmed by several sources. Two of these indicate that one of the four people killed was one Tumagole Richard Lentsela. However, Lentsela's name does not appear in the record of the Rustenburg state mortuary which received the bodies, although one of the names is recorded as one Wilson *Bushy* Senne. It is possible that the names recorded in the mortuary register were obtained from false identity documents carried by the operatives, as none was identified by their families at the time.

87. Attempts to locate the inquest documentation were unsuccessful. Several Western Transvaal Security Branch operatives applied for amnesty for this incident, but subsequently withdrew their applications. In a final attempt to establish whether Mr Lentsela was involved, the Commission approached two MK commanders who had been based in Botswana at the time of the incident. They were only able to identify one of the persons in the incident, although one of them thought it possible that one of the others may have been a person named 'Bushy.'
88. While the evidence suggests that Richard 'Bushy' Lentsela was killed in the Nietverdiend incident, further investigation is required to confirm this. Although it is known that the bodies of the 'Nietverdiend Four' were buried as paupers at Hartbeesfontein, no exhumation was conducted, and the identities of a further two need to be established.

## **LESSONS AND RECOMMENDATIONS**

89. The Commission notes that the issue of exhumations is a sensitive one, requiring further work. The Commission will hand the Ministry of Justice a comprehensive report on the work of the task team, detailing successful exhumations, problematic exhumations and a list of the exhumations that still need to be carried out.
90. The Commission notes, for the benefit of the agencies that will carry out exhumations in the future, the lessons that have been learnt through the exhumation process:

### **Dealing with families, relatives and communities**

91. Any investigation or exhumation carried out by any body or structure must be done in consultation with the families or their representatives, and the community.
92. Prior to any exhumation, families should be approached for ante-mortem information.
93. Undignified or unskilful handling of remains may further traumatise families.
94. Families must be given a realistic expectation of the outcome of any investigation or exhumation – given the state of the remains, the number of bodies and problems with identification.

95. Families must be provided with proper information and psychological support.
96. The subsequent process of identification must be explained to the families.
97. The families must be told whether the identification process will rely on simple or traditional techniques or whether more sophisticated technology will be used. In this regard, it is important to advise that sophisticated technology will only be used if it is available and necessary for the process.
98. The notion of what constitutes a family may vary with cultural context. In addition, clear guidelines need to be developed to deal with divided families.

### **Dealing with identification responsibly**

99. In carrying out exhumations, the identification process is critically important.
100. The EAAF<sup>28</sup> has stated that ‘the habitual and in our view mistaken procedure often followed is to open a grave first, and conduct the rest of the investigation afterwards’. The investigation and exhumation process should, in their view, be broken into three phases, each of which is intimately connected to the others:
  - a Prior to the exhumation taking place, there should be an investigation of the oral and written sources, which allows for the construction of the case history and a working hypothesis.
  - b The fieldwork phase includes the retrieval of the body and associated evidence, whether from the site of the discovery or from a regular grave.
  - c In the laboratory work phase, the corresponding analysis of remains and other physical evidence should be carried out.
101. In this regard, it will be important for any structure carrying out exhumations to take the following steps into account:
  - a ‘Identification’ is defined as ‘individualisation by the attribution of birth, name or other appropriate name to human remains’.<sup>28</sup>
  - b Identification is one aspect of the investigation into a death, which seeks answers to other questions (e.g. the cause of death).

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<sup>28</sup> Luis Fondevbrider, *Human Remains Management*. Argentine Forensic Anthropology Team (EAAF).

<sup>29</sup> International Committee of the Red Cross (ICRC), *The Missing*, 10.2002.EN/3.

- c An identification can generally be made in three different ways:
  - i. visual or customary (relatives or acquaintances viewing the remains, identity documents or tags);
  - ii. the weight of circumstantial evidence (matching of ante-mortem data with information collected during the examination), and
  - iii. scientific/objective methods (use of dental records, fingerprints or DNA).

102. These three steps do not necessarily follow on one another. However, the usual practice is that, as identification becomes more difficult, the emphasis moves from one to the other. Where possible, visual identification should be complemented by any one of the other two methods. Whatever the approach to identification, it must be adapted to the context.

103. The identification of human remains through DNA typing should be undertaken when other investigative techniques of identification prove inadequate.

### **Responsibility and accountability for the examination and identification of human remains**

104. A number of different civil society structures may decide in the future to embark on exhumation program. In this regard it is important to note the following:
- a The state is the authority with the responsibility to ensure that human remains are examined and identified by qualified and competent people.
  - b The examination of remains should be carried out by qualified forensic specialists.
  - c Identification is carried out and confirmed by a medically qualified or legally competent person. Such identification should be confirmed only when all the relevant information has been integrated properly.
  - d The issuing of a certificate of death is the responsibility of a medically qualified person or the legal officer responsible for making the identification.

### **Exhumation of human remains**

105. The Commission recommends that the following guidelines should be taken into account and strictly applied:
- a the grave site should be located;
  - b a security perimeter should be established;
  - c the surface and features should be photographed and documented;

- d the boundaries of the grave should be established;
- e the soil covering the remains should be removed;
- f the remains should be exposed;
- g the location of the remains should be carefully mapped and photographed;
- h the position of any personal effects or other objects not attached to the remains (e.g. keys and bullets) should be carefully noted, labelled distinctly and kept separate;
- i the remains should be carefully removed, keeping them together as an entire body or parts of bodies;
- j the remains should be stored;
- k where appropriate, the family should be permitted visual access to the remains.

## **Cultural rites**

106. In most cultures, sacred rituals dealing with the dead are extremely important. In certain local contexts in Africa, custom demands that 'the spirit of the dead' be officially brought home and inaugurated as an 'ancestor'. Such rituals introduce the spirit to the living. It is believed that such rituals bring the spirit home out from the wilderness and into the home to rest and to watch over the living.
107. The tragedy of politically motivated deaths and disappearances impacts on traditional cultural and spiritual rituals, which can often not be performed. Families are left bereft and kept in a state of suspended mourning, knowing that the dead that can never rest. Certainty about their dead brings families small consolation, as it also renders up memories of how the loved one may have been treated before death.

## **The need for support**

108. Graves may provide answers, but these answers may not be what the families had anticipated. Exhumations may therefore impact negatively on families and communities. Families should be prepared to deal with unexpected outcomes.
109. Families should be carefully prepared by the organisation or institution carrying out the exhumation:
- a An empty grave will cause additional pain to a family.
  - b The grave may contain fewer or more individuals than were expected. The search for identity and for relatives of the deceased then begins.

- c The remains of women who were pregnant at the time of death result in a double sense of loss.
- d Skeletal evidence of great suffering prior to death (such as multiple fractures or dislocations) can provide painful proof of events that occurred before death.
- e Witnessing the bones forces families to accept the reality of death, for which they may be inadequately prepared.

110. Amani Trust, an NGO involved in exhumations in Mataberland, Zimbabwe, has argued that, 'to carry out exhumations without ensuring that families of the exhumed have access to psycho-social and emotional support is irresponsible'.<sup>30</sup>

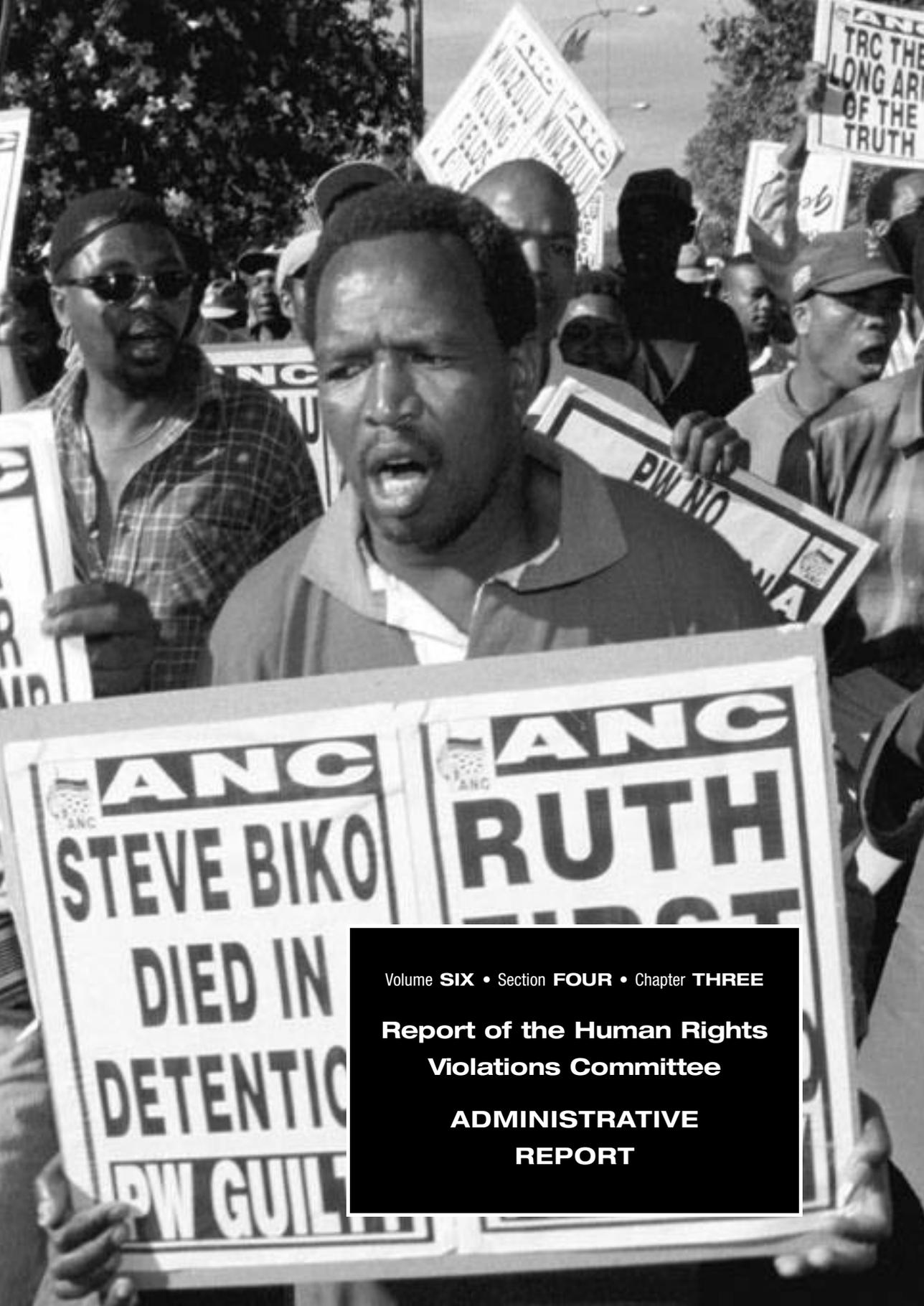
## CONCLUSION

111. The Commission learnt some painful lessons during this process. While exhumations are a powerful mechanism to break the silence and establish the truth, they can do great harm if not conducted properly and with adequate support for families. Those organisations carrying out exhumations must ensure that they are carried out in proper consultation with families and communities.

112. It is only then that exhumations may contribute to a process of healing.

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<sup>30</sup> Shari Eppel, Amani Trust, *Healing the dead to transform the living*, ICRC/The Missing/10.2002/EN/3.



Volume **SIX** • Section **FOUR** • Chapter **THREE**

**Report of the Human Rights  
Violations Committee**

**ADMINISTRATIVE  
REPORT**

# Administrative Report

## ■ INTRODUCTION

1. The duties and functions of the Human Rights Violations Committee (HRVC) were clearly defined in section 14 of the Promotion of National Unity and Reconciliation Act No. 34 of 1995 (the Act). The HRVC was mandated to enquire into systematic patterns of abuse; to attempt to identify motives and perspectives; to establish the identity of individual and institutional perpetrators; to find whether violations were the result of deliberate planning on the part of the state or liberation movements, and to designate accountability, political or otherwise, for gross human rights violations.
2. During the operational phase, the HRVC was responsible for gathering victim statements and the holding of hearings – including victim hearings, event hearings, special hearings, institutional hearings and political party hearings. It was greatly assisted in its work by the Investigation Unit of the Truth and Reconciliation Commission (the Commission). The Committee was also responsible for making findings confirming that victims had been the subject of gross human rights violation as defined in the Act. The HRVC acted as the engine of the Commission.
3. The HRVC compiled a number of reports that formed part of the Final Report of the Commission, which was handed to President Mandela on 29 October 1998.
4. The HRVC collected a total of 21 519 victim statements during the two-year operational period. More than 15 000 statements contained at least one gross human rights violation. All in all, the 21 519 statements contained more than 30 384 violations. The HRVC made more than 15 000 findings during this period and completed all of its hearings, as was required in terms of its mandate.

## COMPLETING THE FINDINGS PROCESS

5. In order to fulfil the terms of its mandate, the HRVC established a findings process.<sup>31</sup> The HRVC was required to make findings confirming that persons making statements were victims of gross human rights violations as defined in

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<sup>31</sup> See Volume One, 'Methodology'.

the Act. Findings were made on a 'balance of probabilities'. Statements that were rejected as being untrue became negative findings. In those instances where an incident was considered 'not to be politically motivated' or 'not having a political context', the HRVC would classify the finding as 'not political'. Where a statement dealt with an incident that did not fall within the mandate period, it would be classified as 'out of mandate'. These findings were classified as negative findings and were made at regional level by the regional HRVCs.

6. At the time of the publication of the Final Report, at least one third of the required findings had not been completed and confirmed by the national HRVC. The HRVC still had to make more than 5500 victim findings and confirm more than 2000 negative findings.
7. The findings process turned out to be much more complex and time-consuming than the Commission had anticipated. The Commission was required by law to cease its statement-taking phase and hearing operations by 15 December 1997. However, in that month, victims in the province of KwaZulu-Natal decided to join the process and filed more than 5000 statements with the regional office. Offices in Cape Town, East London and Johannesburg were also flooded with last-minute statements from potential victims.
8. Commission policies and processes required that all of these statements be processed, registered, investigated or subjected to low-level corroboration, and finally to have victim findings made on them. The statements taken as the process was about to end placed a huge administrative burden on the Commission.
9. However, by this time, the Commission had already begun to scale down its staff complement in the regional offices. Moreover, all units dealing with investigation and corroboration had been reduced. As a result, the HRVC could not complete its work. Moreover, the Commission could not publish the victims' volume (Volume Seven), a volume consisting of brief summaries of the experiences of all who were declared victims by the Commission. In addition, a number of disappearance cases and exhumations had not been completed or resolved. It became clear that the Commission needed to find a mechanism to deal with these outstanding issues.
10. This led to a decision by the Commission that, in addition to the Amnesty Committee staying on to complete its work, both the HRVC and the Reparation and Rehabilitation Committee (RRC) would need to appoint a Commissioner to

complete this unfinished business. The Commission requested that the Minister of Justice appoint the Deputy Chair of the Committee<sup>32</sup> to complete the outstanding work of the HRVC. The Commissioner was accordingly appointed by the Minister.<sup>33</sup>

## **TASKS OF THE HRVC AFTER OCTOBER 1998**

11. The tasks outstanding at December 1998 were identified by the HRVC as the following:
  - a. Making victim findings on the remaining statements received and confirming the gross human rights violations suffered by victims. As at December 1998, these numbered 5500 in total.
  - b. Auditing and verifying the negative findings made at regional level. These negative findings totalled more than 2000 in December 1998. Many of these negative findings were made because the Commission's policy on arson cases had not been clearly established when the findings process had begun. The HRVC was also advised by the Commission's legal advisor that it would need to establish a mechanism to deal with appeals and reviews from potential victims.
  - c. Finalisation of the 'popular version' of the Commission's report;
  - d. Finalisation of the victim summary project;
  - e. Finalisation of the report on disappearances; and
  - f. Finalisation of the report on exhumations.
  
12. The HRVC was also required to carry out an audit of the database with a view to cleaning up contaminated data. The findings process required that the data be checked and verified in order to maintain the integrity of victim findings. This would ensure that the reparation process would not be compromised by incorrect information that could lead to incorrect payments of interim reparation. In addition, the victim summary project required an accurate account of each victim's experiences. This operation had to be carried out before the victim summary project and the exhumation and disappearances reports could be finalised.
  
13. This report will deal with progress on each of these tasks, the problems experienced and the mechanisms used to solve the problem areas.

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<sup>32</sup> Commissioner Yasmin Sooka had been one of two deputies to the Chair, Archbishop Desmond Tutu, and she remained behind.

<sup>33</sup> She remained in the full time employ of the Committee until January 2001. Thereafter, she acted in a voluntary capacity until the findings were completed.

## THE COMPLETION OF VICTIM FINDINGS

14. Completing victim findings was the major task and priority for the HRVC. The Act required that the HRVC establish the 'victim status' of a deponent before s/he could be considered eligible for reparation. Accessing reparation through the RRC was thus dependent on being found to be victim by the HRVC.
15. Earlier findings had been affected by the fact that the HRVC had taken a long time to finalise its policy on what constituted 'severe ill-treatment', one of the violation categories defined in the Act. Initially, the Commission did not treat cases of arson and displacement as gross violations of human rights under this category. However, the nature of the violations emanating from KwaZulu-Natal challenged the narrow definitions originally adopted. Arson and displacement (together with political killings and massacres) were the predominant type of violation during the post-1990s conflict, particularly in KwaZulu-Natal and Gauteng.
16. Because many victim findings were made at a time when the Commission's interpretation of the 'severe ill-treatment' category had not been clearly defined, the HRVC had classified many cases as 'negative'. It became necessary to revisit these negative findings and review them in line with the Commission's new policy decision.
17. This task was assigned to the HRVC commissioner who stayed behind to deal with uncompleted work.
18. The Commissioner also had to deal with the fact that very little corroborative information existed in respect of KwaZulu-Natal matters. Most victims who had been caught up in the violence in this province had not felt secure enough to report the violations they had suffered to the relevant authorities. Furthermore, victims – particularly those who were ANC-aligned – reported that the police had refused to take statements from them.
19. Moreover, when the Commission's investigators requested hospitals and police stations for information, they were told that, as the matters were more than five years old, they no longer had files. This had the potential to cause great hardship to the victims in this province who had, for the most part, lived through a conflict that had lasted much longer than in other parts of the country. They had little hope of assistance if the Commission did not make an effort to find creative ways of corroborating their stories.

20. In a major effort to finalise the KwaZulu-Natal matters, the Commission accessed the records of various groups that had monitored the violence in the province during the conflict years. These included the reports of the Human Rights Commission<sup>34</sup>, the reports of John Aitcheson and Mary de Haas, as well as many other groups who had worked with victims of violence.
21. At this late stage, the Commission had very few investigators. Those who remained behind were assigned to dealing with amnesty investigations. The HRVC Commissioner was compelled to pass the onus of gathering corroborative information back to the deponents and families of potential victims. Deponents were requested to obtain affidavits from people in the community who had witnessed the conflict or incident. Thus, if a deponent stated in his/her statement that an incident had occurred during a particular time period, the Commission would cross-reference it with the violence-monitoring reports to ascertain whether there had been reports of violence in that particular area within the stated time period. The Commission would also rely on the corroborating affidavit to confirm the deponent's version of events.
22. The Commission required that findings be made on 'a balance of probabilities'. It was not a court of law and deliberately favoured a policy that gave victims the benefit of the doubt. Thus the standard of proof required was lower than that required in criminal matters, where guilt must be proved beyond reasonable doubt.
23. The problem was compounded by the fact that KwaZulu-Natal is a large province, and the scale of the violence had been so great that it was impossible to identify many of the people who had died. Large-scale mass violations also meant that, in a number of instances, witnesses had been displaced from their original communities or had died subsequently. It became impossible for the Commission to track down all these witnesses or the evidence to support many of the KwaZulu-Natal cases.
24. This is one of the major reasons why so many findings for this region are marked as 'unable', a category that describes cases where there is no corroborative evidence at all.
25. Another problem characteristic of the region was the fact that the violence had carried on beyond the Commission's mandate period. Many deponents made statements about cases which fell into this 'out of mandate' category. Thus many victims were excluded from accessing reparation.

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<sup>34</sup> Now known as the 'Human Rights Committee'.

## **Absence of political context**

26. Many victims came forward to make statements about incidents that were clearly not political and fell into the realm of criminality. In those cases, the Commission made findings to the effect that the case did not fulfil the political requirement.

## **Review of findings**

27. The Commission wanted to ensure that every possible opportunity was given to potential victims in order to ensure that no one was left out of the process. Deponents and victim support groups were notified that there were cases for which it had not been possible to make positive findings because of the paucity of evidence available to the Commission. They were invited to assist the Commission with gathering the evidence relevant to their particular cases. Victims were thus given the opportunity to supply the Commission with further evidence in order to secure a positive finding. The review/appeal process was kept open until January 2002 to allow victims the opportunity of having their findings changed.
28. The HRVC dealt with more than 3000 appeals/reviews during the period 1999 to January 2002. During this period, with the assistance of deponents and victim groups, the Commission was able to make a number of positive findings. The total number of positive victim findings made by the HRVC is 21 074.

## **The ‘closed list’**

29. The HRVC was approached by large numbers of individuals and victim groups who claimed that there were many potential victims who had not been able to make statements to the Commission within the time period allowed by law for the statement-gathering process. The reasons for this ranged from not knowing that there was a cut-off date, to poor communication by the Commission, to unreliable statement-takers who had promised to go back and had failed to do so. Many people also complained that they had made statements to their liberation movement and that these statements had not been forwarded to the Commission. Many complained that their political party had prevented them from coming forward. IFP supporters complained that they had been afraid to participate in the process. More than 8000 statements were collected throughout the country after the Commission had stopped collecting statements.

30. This issue presents a challenge to government. It is clear that many people, through no fault of their own, were unable to make statements to the Commission. While some do, therefore, qualify for reparation, others who may have suffered similar violations do not. This may have a divisive effect in many townships.
31. In many countries that have gone through a similar process, victims have been identified long after the commission has completed its work. There is a recognition that many victims may not have been able to speak out about their pain and suffering at the requisite time. It should be remembered that it took the world more than fifty years to deal with the Holocaust victims. Victims cannot be wished away. Anxious not to burden government with this problem in the future, the Commission adopted a 'closed list' policy which may no longer be appropriate.
32. At the same time, the Commission notes that government has indicated its intention to discuss issue of reparation and future amnesty with the nation. Another item that should be placed on the agenda is the issue of the 'closed list' policy.

### **THE 'POPULAR VERSION'**

33. The Commission had intended to publish a popular version of its report in 1998. Unfortunately, it was unable to complete this task because the Amnesty Committee had not finished its work. Completion of this task was delegated to Commissioners Sooka, Mkhize and Potgieter.
34. A number of extremely talented and creative individuals worked on the 'popular version'. The final document was compiled with the assistance of Professor Njabulo Ndebele and assigned to Professor Bill Nasson of the University of Cape Town and his team.
35. The 'popular version' is now complete. However, decisions still need to be made about the printing and publishing of the book, as well as its distribution strategy. The Commission intends to hand this volume over to the Minister of Justice with the intention that he arrange for it to be published and distributed widely.

### **THE VICTIMS' VOLUME (VOLUME SEVEN)**

36. The Commission decided to prepare a summary of the experiences of each victim who came to the Commission, either through HRVC or the Amnesty

Committee. The completion of this volume became one of the greatest challenges for the HRVC. Many dedicated people worked on creating the summaries and it took over three years to bring this project to fruition.

37. One of the rules adopted was that all summaries would have more or less the same number of words in order to ensure that no one person was perceived to be more important than another.
38. This project became a mission of love and devotion for those who worked on it. The passion of the summary writers and the pain they shared with victims as they wrote their stories is reflected in this volume. In time, it is hoped that it will become a living monument to those who suffered great pain and loss during the years of struggle. Volume Seven will endure in the nation's memory for many years to come. It remains a major achievement of the HRVC.

## **REPORT ON DISAPPEARANCES**

39. The Commission's report on disappearances is contained in Chapter One of this section. Compiling this report took the better part of two years. The task required detailed research and the careful matching of information from a variety of sources including amnesty applications. The HRVC's only human resources for this project were the two remaining researchers who worked extremely hard on compiling the cases for this report. They scanned through the Commission's database, searching for all cases that dealt with the missing and the disappeared. In many instances, if the disappeared person was dead, the case would be classified as a political killing.
40. The Commission has made a number of recommendations with respect to unsolved disappearances. Many of these 'best practices' will be useful guidelines for the future. The recommendations are set out in Chapter 1 of this section.

## **REPORT ON EXHUMATIONS**

41. The HRVC was also responsible for compiling a report on exhumations. This report appears in Chapter Two of the present section. A more comprehensive report has been compiled and will be handed to the Minister of Justice.

## **DATABASE**

42. All the information collected by the HRVC was captured electronically on the Commission's database. This includes testimony from victims' statements, testimony taken at hearings, investigation material, transcripts of section 29 hearings, submissions made by institutions and individuals, and research and corroborative material. Original documents and other hard copy are held in the Commission's archive, which is currently in the custody of the National State Archives.
43. This material represents one of the most remarkable archival collections in the country and belongs to the nation.
44. The Commission has recommended that the National State Archives be the custodian of this archive so that victims and future generations will be able to access it.
45. It is thus important that the material be stored in a way that is accessible to scholars and to the families of victims. For example, the Commission was simply unable to go back to each victim or family that made a statement to inform them of the results of their investigations. By accessing the archives, families will be able to obtain this information.
46. It is therefore important that victims, their families and victim groups be consulted about how to make the Commission's material accessible in a way that does not undermine the integrity of individuals, be they victims or perpetrators. The privacy of victims should also be respected and taken into account when dealing with access.
47. The HRVC concerned itself mainly with victims and their right to know the truth. In the course of its work, it discovered different kinds of truth. It discovered too that truth must be tempered with justice and compassion.

## APPENDIX: THE 'THIRD FORCE'

1. In its Final Report to President Mandela in 1998, the Truth and Reconciliation Commission (the Commission) made reference to the 'Third Force' in its discussions on the subject of 'Political Violence in the era of Negotiations and Transition, 1990–1994'<sup>35</sup>. In addition, the Commission made a set of specific findings on the 'Third Force' during this period.<sup>36</sup>
2. The early 1990s witnessed unprecedented levels of political violence, with over 14 000 people killed and many more thousands injured. Although violence permeated the country, most violations occurred in the homeland of KwaZulu and the neighbouring Natal province, and in the PWV (Pretoria–Witwatersrand–Vereeniging) region of the Transvaal. In the latter region, the Human Rights Commission (an independent non-governmental organisation) estimated that some 4756 people were killed between July 1990 and June 1993 alone. While many of these killings can be attributed to the internecine conflicts that developed in many communities, primarily between supporters of the IFP and ANC, there were frequent allegations about the role and complicity of elements within the security forces.
3. The 'third force' label was first used by ANC leadership figures in the wake of a wave of seemingly random attacks on the Witwatersrand and Vaal areas in August and September 1990. As the attacks continued, allegations were made that a 'hidden hand', or 'Third Force,' was involved in orchestrating and fomenting violence – to derail the negotiation process and/or to undermine the ANC's efforts to consolidate its political presence. These attacks were believed to involve covert units of the security forces acting in concert with individuals or groupings, such as the IFP and certain right-wing paramilitary organisations.
4. Although the Commission wishes to restrict the understanding of this phenomenon to the post-1990 period, its origins and genesis can be found in the philosophy of the 'Total Strategy' and the practices of covert counter-insurgency that developed throughout the period from the 1960s to the 1980s.
5. The apartheid state's counter-insurgency efforts intensified during the 1980s, and especially after 1986. As testified to by a number of security force amnesty

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35 Volume Two, Chapter Seven.

36 Volume Five, Chapter One, para 126–129.

applicants, the methods employed by specialist covert units included murder, torture, kidnapping and various other covert illegal actions. They also involved the use of proxy and surrogate forces, including freelance criminal elements.

6. The development of intelligence-gathering units with an offensive capacity had proved effective in the Rhodesian situation and was subsequently adapted to the South African context by both the police and military. The devolution of decision-making powers resulted in police units such as Vlakplaas and the Namibian-based hunter-killer unit Koevoet operating with virtual impunity, making it extremely difficult to establish lines of command and accountability.
7. Unlike the police, the military made no disclosures to the Commission about its role in violations, with the exception of admissions about two sets of assassinations executed by South African Defence Force (SADF) Special Forces in 1986. In these cases, the head of Special Forces, Brigadier Joep Joubert, claimed that the chief of the defence force gave him approval. Allegations of complicity in 'third force'-type activities in the 1990s were denied, including those relating to an array of charges generated by General Pierre Steyn's preliminary investigations into covert military operations in late 1992.
8. Such denials and the limited evidence available make it difficult for the Commission to make specific findings, especially on the role of the military. This does not mean, however, that such activities did not take place. Indeed, the security forces were repeatedly involved in a long line of cover-ups of illegal or unlawful activity. This is evident, for example, from evidence about torture and killings that emerged in inquests and trials, which again, in cases such as that of Stanza Bopape, reached the highest echelons of the police.
9. There is no evidence to suggest that this practice was halted during the 1990s. The Harms Commission is a significant example of this: not only were witnesses instructed by their seniors to lie, but the Harms Commission failed to deter them from embarking on further operations.
10. The March 1994 Goldstone Commission report on the criminal activities of the South African Police (SAP), KwaZulu Police (KZP) and Inkatha Freedom Party (IFP) provides further compelling evidence of the fact that senior police officers attempted to subvert a government-appointed commission of inquiry. According to the report, senior members of the SAP repeatedly approached police officers

associated with the Goldstone Commission in the course of the investigation – in ways that could only be construed as obstructive. Further, once the police became aware of Goldstone’s interest in false passports, those in possession of such passports were requested to bring them in for destruction. Similarly, Goldstone investigators learnt that Major General Engelbrecht, the last head of the SAP Counter-Insurgency Unit (C-section), had ordered the destruction of all documentation relating to the SAP’s involvement with Inkatha.

11. The fact that such cover-ups involved senior officers and continued well into the 1990s reflects the extent to which such groups felt they had the authority to act with total impunity. In such a context, the impression must have been conveyed to the more junior members of such structures that, despite negotiations, they were still at war and could make use of whatever means they had at their disposal, if not to rout, then at least to weaken ‘the enemy’. The continued practice of referring to the ANC as ‘the enemy’ in SADF operational commands clearly underscores this.
12. While allegations of ‘third force activities’ in no way account for all or even the bulk of violent incidents during this period, these attacks were particularly significant as they appeared to be largely indiscriminate, and consequently spread terror amongst hundreds of thousands of township residents. The types of attacks included drive-by shootings, attacks on trains and taxis, and massacres at social gatherings such as night vigils and shebeens. Regular allegations of collusion between elements of the security forces and the IFP were refuted as propaganda. Although a number of these attacks could be placed within a matrix of revenge violence, many could not. Indeed, they gave the impression of being deliberately designed to provoke further violence.
13. In late 1991, a Johannesburg-based non-governmental organisation, the Community Agency for Social Enquiry (CASE), published a research report<sup>37</sup> that analysed the first twelve months of Reef violence and highlighted the major actors, victims and alleged patterns of control of the violence that erupted during the period from 22 July 1990 to 31 July 1991. The report was based on thousands of reports from a range of newspapers and figures published by human rights monitoring organisations, including the Independent Board of Inquiry into Informal Repression (IBIIR), the Human Rights Commission (HRC), the Centre for Applied Legal Studies (CALS) and Lawyers for Human Rights.

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<sup>37</sup> *Who is murdering the peace?* CASE, October 1991.

14. The report stated that IFP supporters and the police were reportedly responsible for the vast bulk of the classifiable acts of violence. Furthermore, it was revealed that the targets or victims of the violence were mainly ordinary citizens. Of the 2271 people killed during the period, 87 per cent were recorded as 'general members of the community'. There were reports of direct collusion between members of the SAP in 257 confirmed incidents. The report also showed that IFP-supporting hostels provided the base for massive attacks on squatter camps, and that at least 915 of the total number of 2271 killed during the period were the result of attacks from these hostels.
15. The report suggested that the violence could not simply reflect a violent power struggle between the ANC and IFP, and that the monthly breakdown of the deaths reported during the period made it difficult to believe that the sharp monthly variations were random.
16. The sudden escalation of violence in 1990 coincided with the establishment of Inkatha as a national political party in July, and its attempts to develop a political base in the Transvaal.
17. Inkatha's relationship with apartheid security force agencies had a long history. In April 1986, the State Security Council approved guidelines for a strategy for a counter-revolutionary war, which, amongst other things, emphasised the fact that the forces of revolution should not be combated by the security forces alone, but also by 'anti-revolutionary groups such as Inkatha ... or the ZCC<sup>38</sup> as well as the ethnic factor in South African society'.
18. In 1986, the State Security Council also authorised the provision of military training for 200 Inkatha members by the SADF. The special project to support Inkatha was called Operation Marion and was the responsibility of the Directorate of Special Tasks, a section within the office of the Chief of Staff (Intelligence), which was also responsible for supporting insurgency initiatives in neighbouring front-line states.
19. Support for Inkatha continued in the early 1990s. It is now known that President de Klerk approved a Strategic Communication (Stratcom) propaganda project in 1990, which included financial support by the SAP for Inkatha. In July 1991, the existence of a secret police project to fund Inkatha was revealed in the media.

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38 Zion Christian Church.

In response to these revelations – which became known as ‘Inkathagate’ – President de Klerk reshuffled his two leading security ministers, Malan and Vlok, and ordered a new review of secret projects.

20. It is also now evident from evidence presented to the Commission that elements in both the police and the IFP continued to collude with one another throughout the negotiation period, and that the police, mainly through Vlakplaas operatives, supplied considerable amounts of weaponry to the IFP during the 1990s. This was also covered by the March 1994 Goldstone report, which implicated members of the SAP, KZP and IFP in the supply of weapons to the IFP. This included a massive arms cache unearthed in KwaZulu-Natal during 1999, which was provided to the IFP by Vlakplaas, ostensibly for the purpose of training self-protection units. The Commission received a number of amnesty applications corroborating this evidence from both Vlakplaas and IFP operatives. Eugene de Kock, for example, claimed that his unit provided and sold weapons directly to hostels on the East Rand and elsewhere. When Vlakplaas was officially closed down in 1991, unit members were redeployed to work on the recovery of illegal firearms. This provided a perfect cover for the further distribution of weapons and other fraudulent activities. Chapter One of the Investigation Unit’s Gun Running Report deals with the ‘receipt of weapons by the IFP’ and describes the background and systematic distribution of weapons in the PWV<sup>39</sup> region.
21. In addition, the Commission received detailed testimony from Vlakplaas operatives about the specific nature of relations with senior IFP officials operating in both the Transvaal and Natal. Security police resources were used, and a core group of IFP members was allegedly placed on the Vlakplaas payroll for a short period of time. According to De Kock, the relationship was known about, approved and even encouraged by senior police officials.
22. When the IFP’s Transvaal Youth Brigade leader, Themba Khoza, was trapped in the grounds of the Sebokeng hostel after the massacre of nineteen hostel inmates on the night of 3/4 September 1990, the local police fabricated evidence to ensure that Khoza and the 137 IFP supporters arrested with him could not be linked to the firearms found in the boot of Khoza’s vehicle and apparently used in the massacre. According to Vlakplaas operatives, the weapons found matched those they had provided to Khoza the previous day, while Khoza’s car was provided by the Security Police. Vlakplaas also allegedly put up Khoza’s bail money.

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39 Pretoria-Witwatersrand-Vereeniging.

23. Amnesty was granted to the head of the Vaal Triangle Security Police, Jacobus Francios Conradie (AM4123/96), who admitted to 'defeating the ends of justice'. The officer investigating the massacre, the head of the Vaal Triangle Murder and Robbery Unit, Jacobus Jacobs (AM 4373/96), and an officer at the scene of the crime, Arthur John van der Gryp (AM 4146/96) were also granted amnesty. Conradie denied that his actions to assist Khoza were approved or authorised, but claimed that he had acted unilaterally when he found out how important Khoza was to the police.
24. While the three amnesty applicants' versions of events largely corroborate one another, other important issues that are not thoroughly covered in their applications saw the light of day at the Section 29 in camera hearings. Regrettably, these amnesty applications were heard in chambers, preventing any further opportunity to explore the case and its broader implications in terms of collusion between the security forces and the IFP.
25. Although no admissions have been made by the IFP regarding these allegations, several investigations undertaken by the National Department of Public Prosecutions are believed to have reached an advanced stage, indicating that there is *prima facie* evidence against certain individuals.
26. Disclosures made regarding the Sebokeng incident support the assertion that 'third force' elements were at play. Not only did one of the security forces' most 'successful' counter-insurgency units supply weaponry to the Inkatha attackers, but the police were also successful in protecting one of the most prominent Inkatha leaders in the region in the legal process following the massacre.
27. Consistent allegations that Themba Khoza and other IFP leaders in the region were involved in the distribution of weapons and had regular meetings with security forces representatives such as Eugene de Kock further supports the findings in the Commission's Final Report.
28. The Commission thus finds that, while little evidence exists of a centrally directed, coherent or formally constituted 'Third Force', a network of security and ex-security force operatives, frequently acting in conjunction with right-wing elements and/or sectors of the IFP, was involved in actions that could be construed as fomenting violence and which resulted in gross human rights violations, including random and target killings.<sup>40</sup>

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<sup>40</sup> Volume Five, Chapter Six, para 129.

29. Allegations of 'third force' activity reached a crescendo in the wake of the Boipatong massacre in June 1992. The Commission did not undertake detailed investigation into all allegations of security force complicity. Instead it relied on a number of reports submitted to it by monitoring groups who went into Boipatong immediately after the massacre and compiled reports based on the testimony received. The Commission made a series of detailed findings in which it alleged that there had been direct collusion between the security forces and the IFP, and that the security forces' direct participation in the massacre was alleged. Conversely, the Amnesty Committee accepted the version of most amnesty applicants, who denied any security force involvement in the massacre, and rejected the evidence of Andries Matanzima Nosenga, the one applicant who supported victims' assertions that the security forces were complicit. The Amnesty Committee did, however, leave open the possibility of security force complicity: it acknowledged the victims' allegations, while accepting that there was no evidence to connect the amnesty applicants with them. The Commission does not accept that allegations about this complicity were fabricated.
30. An analysis by the Commission's Investigation Unit into available material relating to the massacre and subsequent investigations raises a number of serious shortcomings or issues that raise doubts about the credibility of the police investigation into allegations of police involvement. Within two weeks of the massacre, for example, the SAP officer tasked to investigate the allegations reported that they had been proven to be untrue. The Commission's enquiries established that approximately fifty witnesses testified about the direct or indirect involvement of the security forces. It appears that several of the witnesses were either ignored or deliberately not presented. A number of other shortcomings were presented in the Investigation Unit report.
31. October 1992 seems to have been a turning point for 'third force' activities. The Goldstone Commission's discovery that a Military Intelligence operation against the ANC was still operational led to the appointment of General Steyn by President de Klerk to investigate the allegations of armed forces involvement in the violence. At the same time, Colonel de Kock was approached by his superiors and asked to resign from the police force.
32. Although General Steyn's and subsequent investigations were largely inconclusive in terms of proving SADF involvement in a wide range of illegal and/or unauthorised activities – including 'third force'-style attacks – the pall of suspicion and incriminating evidence has not been lifted. Analysis of violence

statistics indicates that typical hit-squad attacks declined after mid-1992 while the level of political violence rose steadily until 1994.

33. By the 1990s, patterns of security force conduct that crossed the boundaries of legality emerged. This conduct was condoned and in some instances encouraged. A network of security force operatives – bound by oaths of blood and secrecy – had been developed, with informal channels of communication and in possession of, or with access to, material resources and weaponry. While the new De Klerk government significantly dismantled many formal securocrat structures, little obvious attempt was made to dismantle these networks or to change the mind-set of operatives' intentions to continue an all-out war on the ANC and its allies. Indeed, where efforts were directed at uncovering such networks – as with the establishment of the Harms Commission – security force personnel were instructed by their seniors to lie, sending a clear signal that these were simply public relations initiatives and that they were not intended to change the *status quo*. The fact that Vlakplaas personnel continued with unlawful activities at the very time that the Harms Commission was sitting is clear testimony to this. Given this background, it is unsurprising that evidence emerged of security force involvement in the violence and destabilisation of the 1990s.
34. Various explanations for the violence in the early 1990s have been proffered that do not necessarily take into account the role of the security forces. These have included assertions that the violence was essentially symptomatic of the rapid political change that was taking place, fuelled by ethnic divisions and socio-economic pressures. Certainly, existing tensions between Inkatha and the ANC were exacerbated, fuelled by the mobilisation of ethnic and political tensions. There is also evidence that individuals and groups in some areas were targeted on the basis of their ethnic background. But such ethnic division was far from being monolithic or monocausal in its manifestations.
35. While such explanations for the violence addressed critical aspects of why it was happening, they were largely unsatisfactory in that they failed to engage either with the specific dynamics of violence in particular communities or with emerging patterns and trends. Violence often appeared to take on a life of its own – cycles of revenge often triggered by indiscriminate and unprovoked attacks. Assumptions of guilt and responsibility were manifest. Attempts to instil reason and constraint were drowned by calls for action. The need to defend frequently and rapidly against attacks metamorphosed into offensive action.

36. There were also understandable concerns that the picture being drawn by many commentators and analysts was manipulated and skewed – unconsciously or even deliberately (as much of the internecine conflict in certain communities in the 1980s had been) – as part of a broader depiction of ‘black on black’ violence. This was interpreted in some quarters as part of a deliberate strategy to undermine the ANC alliance and the broader objectives of democratic transformation by creating the perception and imagery that political opportunities for the black majority would result inevitably in conflict and violence. As such, violence was interpreted as a political tool in the power play for the negotiated settlement.
37. We are therefore presented with a spectrum of views about the violence and ‘third force’ allegations. These range from benign interpretations of government and security force action at one level to allegations of a specific agenda to destabilise political opponents at the other.
38. Within this spectrum of views, a host of important questions and issues has been raised, many of which the Commission was not able to address adequately, due to a lack of resources and time constraints. Other relevant structures have not really addressed the outstanding issues either. Unresolved issues include an analysis of exactly what the government did to address the violence, and whether its response can be classified as adequate or reasonable; the extent to which the government had lost control of its security forces; a detailed analysis of how the security forces reacted to and addressed violence in various locations, and the role of leadership and the rank and file, their attitudes and the limitations and obstacles to their work.
39. During the late 1980s, the security forces intensified their counter-insurgency efforts at the same time as the government was developing its preliminary contacts with the ANC. Repression and violence were evidently an integral component of a broader political strategy at this stage. However, the extent to which this was carried over into the negotiations period of the early 1990s is less clear.
40. Understanding the characteristics of violence in the 1990s, therefore, requires a more nuanced appreciation of security force practices and policy within the context of political change and the limits of institutional transformation that accompanied this.
41. While the involvement of security force individuals and structures in ‘third force’ violence was to some degree corroborated, the quality and quantity of available

evidence, whilst significant, is generally thin. No detailed or focused investigations were initiated; few amnesty applications were received, and lines of command and accountability were not established.

42. The Commission was also unable to establish the extent of covert networks and how they evolved and mutated during the conflict period. Consequently, it is not clear whether the senior security force personnel involved represented their own, state or right-wing agendas. In a rapidly changing political situation with shifting alliances, the Commission accepts that it is probable that there were several agendas involved, at different levels within political and security force hierarchies.
  
43. In this context, explanations for and allegations relating to the dynamics of and rationale behind 'third force' activities remain vociferously contested. The Commission believes that more light must be shed on the role and activities of the military and the police, and especially on the role of covert and other specialist units during the violence in both the 1980s and 1990s. Ongoing research suggests that there is considerably more to be uncovered in this respect. The Commission therefore believes that further enquiries and investigations regarding 'third force' allegations are an essential part of a broader process in terms of developing our understanding of past conflict and those responsible for it.