



Volume **SIX** • Section **ONE** • Chapter **TWO**

**Report of the  
Amnesty Committee**

**ADMINISTRATIVE  
REPORT**

# Administrative Report

## ■ INTRODUCTION

1. The objective of this chapter is to give as clear a picture as possible of the administrative procedures, mechanisms and functions of the Amnesty Committee (the Committee). The functions of the executive secretary as administrative head of the Committee were integrated with those of the chief executive officer (CEO) of the Truth and Reconciliation Commission (the Commission) during 1997 and performed by the same person, but this section deals mainly with the affairs of the Committee. A separate report is presented on the duties of the CEO.
2. For the sake of completeness, this section should be read with the CEO's report and with the earlier Management Report of the Committee, which formed part of the Commission's Final Report that was handed to the President in October 1998.<sup>20</sup>
3. This chapter offers an overview of the amnesty process from the perspectives of the executive secretary and later the CEO. The provisions of the Act will be reflected upon insofar as they related to the administration and management of, especially, the amnesty process. Reference is also made to the development of the administration and amnesty process since 1996. The contents are based on a variety of documents, including the minutes of the meetings of the Committee since its establishment, internal memoranda, the minutes of meetings of the various components of the Commission and management, as well as inputs from the departments and sections concerned.

## ESTABLISHING THE COMMITTEE

4. Section 16 of the Act provided for the establishment of the Committee as one of the three statutory Committees of the Commission. Its mandate was to grant amnesty to those persons who successfully applied for amnesty in respect of acts, omissions and offences that had been associated with political objectives and committed in the course of the conflicts of the past. One of the basic premises was that national unity and reconciliation would become possible only if the truth about past human rights violations became known (see Chapter One of this volume).

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<sup>20</sup> Volume One, Chapter Ten.

## HOW THE AMNESTY COMMITTEE WAS CONSTITUTED

### The Committee: An overview

5. In terms of section 17 of the Act, the Committee initially consisted of only five members, two of whom had to be Commissioners. President Nelson Mandela appointed Judge Hassen Mall and Judge Andrew Wilson as chairperson and vice-chairperson respectively and Judge Bernard Ngoepe as the third member. After consultation with the Commission, the President appointed Commissioners Sisi Khampepe and Chris de Jager as members of the Committee.
6. These five members had to attend to the setting up of the Committee and deal with all applications for amnesty received. Due to the large volume of work and in order to expedite the process, the membership of the Committee was subsequently increased to eleven in June 1997 and to nineteen during December 1997. All members were legally qualified, being judges of the High Court, advocates and attorneys. The President dissolved the Committee with effect from 31 May 2001 in terms of Proclamation R31 dated 23 May 2001.
7. Despite the increase in numbers, the Committee never experienced the benefit of its full complement of nineteen members for any significant period of time. This was due to the resignation of some members to take up other positions, and poor health on the part of others. Moreover, the limited lifespan of the Committee made it impractical to fill these vacancies. The Committee also suffered the loss of its chairperson, Judge Hassen Mall, who passed away on 18 August 1999. He was replaced as chairperson by Judge Andrew Wilson, and Acting Judge Denzil Potgieter was appointed vice-chairperson.
8. The following persons served with distinction on the Committee:

Judge H Mall	15/12/1995–18/08/1999
Judge A Wilson	15/12/1995–31/05/2001
Judge B Ngoepe	15/12/1995–01/07/1998
Ms S Khampepe	15/12/1995–31/03/2001
Advocate C de Jager SC	15/12/1995–31/05/2001
Advocate D Potgieter SC	01/07/1997–31/05/2001
Advocate N Sandi	01/07/1997–31/05/2001
Mr W Malan	01/11/1997–31/05/2001
Advocate J Motata	01/11/1997–31/01/2001
Advocate L Gcabashe	01/12/1997–30/08/1999

Judge S Miller	05/02/1998–28/02/2001
Judge R Pillay	05/02/1998–31/05/2001
Judge S Ngcobo	05/02/1998–01/01/1999
Advocate F Bosman	05/02/1998–31/05/2001
Advocate S Sigodi	05/02/1998–31/05/2001
Mr JB Sibanyoni	05/02/1998–31/03/2001
Dr WM Tsotsi	05/02/1998–30/10/1999
Mr J Moloï	05/02/1998–01/07/1998
Mr I Lax	05/02/1998–31/05/2001

## **The Amnesty Department**

9. The Act made no provision for an administrative component for the Committee. It was left to the Committee to secure the services of professional and administrative personnel to assist it in executing its mandate. Resources were initially shared with other components of the Commission. This hampered the Committee in setting up the independent administrative, investigative and corroborative mechanisms it needed.
  
10. In April 1996, a month before its first public hearing, the Committee had a staff complement of two professional and three administrative officials. A year later, in April 1997, the Committee had only six professional and seven administrative officials to administer, peruse and prepare more than 7000 amnesty applications for decisions by the Committee. Due to tremendous time constraints, there was inadequate opportunity for staff training and development. It was left to the members of the Committee to take care of some of the administrative duties.
  
11. In an attempt to address these administrative difficulties, Advocate Martin Coetzee, a senior official from the Department of Justice, was seconded to the Commission on a temporary basis in August 1997 to act as the executive secretary of the Committee, with instructions to reassess the entire amnesty process. (Advocate Coetzee was later appointed as executive secretary of the Committee, and became chief executive officer of the Commission in May 1999.)
  
12. Under Advocate Coetzee, operational processes were co-ordinated and placed under stricter management control. Mechanisms were put in place to deal properly with amnesty applications. The reassessment resulted in an increase in the number of both staff and Committee members. Within a period of six months,

the number of staff members making up the Amnesty Department increased from the original thirteen to ninety-four, in the following categories:

- leaders of evidence;
- evidence analysts;
- information analysts;
- administrative staff members;
- logistics officers;
- investigators;
- witness protectors;
- secretarial staff; and
- an amnesty victim co-ordinator.

### ***Leaders of evidence***

13. Leaders of evidence were advocates and attorneys with practical experience. They were responsible for the final preparation of applications that needed to go for public hearing. Supervised by a chief leader of evidence, leaders of evidence conducted and led evidence at hearings. The chief leader of evidence and the executive secretary were responsible for scheduling hearable applications.

### ***Evidence analysts***

14. Evidence analysts were legally qualified people without practical experience. Later on in the process, persons without legal training but with sound analytical or investigative skills were also appointed as evidence analysts. Evidence analysts were responsible for the initial perusal and preparation of amnesty applications. They saw to it that the necessary investigations were conducted and gathered all relevant information and documentation.

### ***Information analysts***

15. Information analysts were people experienced in analysing data and capturing information on a computer database. They were responsible for the electronic capturing of the contents of applications and other related information.

### ***Administrative staff members***

16. Administrative staff members were responsible for the processing, filing and safekeeping of amnesty applications. Some were also responsible for dealing with incoming correspondence relating to applications.

### ***Logistics officers***

17. Logistics officers were responsible for all logistical arrangements in connection with public hearings.

### ***Investigators***

18. Investigators were responsible for investigating applications and obtaining the evidence and documentation required by the Committee and evidence analysts. The Committee was fortunate in obtaining the services of experienced members of the South African Police Services (SAPS) and Correctional Services and a number of international investigators. Investigators were based in Cape Town and at the Commission's regional offices in Johannesburg, Durban and Port Elizabeth.

### ***Witness protectors***

19. Witness protectors were experienced members of the security forces responsible for the protection of (predominantly) applicants, implicated persons and victims.

### ***Secretarial staff***

20. Secretarial staff consisted of senior and junior secretaries who rendered secretarial services and, in certain instances, served as personal assistants to members of the Committee and senior staff members.

### ***Amnesty victim co-ordinator***

21. The amnesty victim co-ordinator was responsible for attending to the victim referral process of the Committee.
22. The functions and responsibilities of the Committee and the various sections of the amnesty department were clearly demarcated. Regular workshops emphasised training and motivation. Proper guidelines were developed for dealing with applications from the moment they were received and registered until they were finally disposed of. (These will be dealt with in more detail later in this chapter.)
23. All these measures proved effective in placing the amnesty process on a sound footing. The position improved even further when the activities of the Commission were suspended on 29 October 1998, and staff members from other parts of the Commission were reallocated to the Committee.

## **THE AMNESTY PROCESS**

24. The purpose of this section is to give an account of how amnesty applications were processed before they were ready for decision by the Committee. The process was far from flawless. Indeed, as has already been pointed out, a complete reassessment and the implementation of new and improved systems became necessary during 1997.
25. It should be emphasised from the outset that the amnesty process was unique. There were no historical or legal precedents on which to draw. The Act was silent on procedures, and the Committee had to find its own way. The end product was the culmination of various ideas and proposals and the result of mechanisms that developed as the process evolved.
26. The Commission came into operation on 15 December 1995 and the first application for amnesty was submitted on 1 January 1996. The Committee, which was based in Cape Town, met for the first time in February 1996. It became operational during April 1996 and held its first hearing on 20 May 1996. By the end of April 1996, a total of 197 applications had been received. At this time, five Committee members and four staff members were dealing with the applications. By 30 September 1997, in excess of 7000 applications had been received and were being dealt with by a maximum of nineteen Committee members and ninety-four staff members.

### **Receipt and processing of application forms**

27. A standard application form for amnesty was developed and distributed for completion by prospective applicants. The form was translated into all eleven official languages of South Africa and was made available at all the offices of the Commission, offices of the Department of Justice and prisons. Upon completion, these forms were handed in at either the head office of the Commission or at one of its three regional offices for forwarding to the head office.
28. Applicants were required to provide the following information and particulars:
  - a personal details;
  - b political or other affiliation, or employment by the state;
  - c particulars regarding the act, omission or offence for which amnesty was sought;

- d particulars regarding victims;
- e particulars regarding the political objective that was being pursued in committing the act, the omission or offence for which amnesty was sought;
- f whether any benefits had accrued as a result of the act, omission or offence;
- g particulars as to whether the act was committed in execution of an order or with implied or express authority; and
- h particulars regarding prosecutions and civil proceedings.

29. On receipt, each application was registered and allocated a unique registration number. The Committee decided that all applications for amnesty had to be registered, whether or not they were submitted on the prescribed form.<sup>21</sup> The rationale behind this decision was to avoid penalising any person who had shown a clear intention to apply for amnesty. The correct application form was then sent to the person concerned with a request that she or he complete it and return it to the Committee. It was also made very clear that, unless an application was properly completed and submitted in terms of the Act, the Committee could not consider it. Some of the applications received and registered as amnesty applications were later found to be applications for reparation or statements on human rights violations, and had to be deregistered and referred to the appropriate section of the Commission.

### **Capturing information**

30. All applications received were electronically registered on the Commission's database. In addition, all information initially contained in the application was electronically captured. As the process progressed, all relevant information pertaining to a specific application, including information on hearings, victims and decisions, was added. This process proved invaluable for the purposes of research and cross-referencing. The resultant database will form an integral part of the history concerning the past political conflict.

### **Safekeeping and administration of application forms**

31. Once registered, copies were made of all applications, and the originals were placed in fireproof strongrooms for safekeeping and in order to secure their confidentiality. The copies were used as working documents when applications were being prepared for consideration.

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<sup>21</sup> Indeed, many 'applications' were made simply by writing a letter to the Committee or by furnishing the information on other application forms used by the Commission.

32. The administrative component of the Committee was the nucleus that managed the movement of the applications, and thus played a central role in the amnesty process. A staff component of eight officials, under the direct supervision of the executive secretary, was responsible for the safekeeping and administration of the application forms. All information, correspondence and documents relating to applications were channelled to this section, which was responsible for filing and subsequent distribution to the staff responsible for preparing the applications. Audits were conducted on a regular basis to ensure that all applications were accounted for.
33. An application was finalised only once the Committee took a decision on it. It was then put on file and prepared for archiving.

## **Workshops**

34. The Committee held several workshops during its existence, with the aim of streamlining the process and ensuring the proper execution of its mandate. The first workshop for evidence leaders and investigative personnel was held in October 1996. This was followed by workshops in September and November 1997, April 1998 and March 1999. Workshops were also held for administrative and logistical staff. Regular meetings to discuss and evaluate the amnesty process were held with all the sections in the Department.
35. These workshops proved an invaluable way of training staff and making them part of the process. Participation by Committee members went a long way towards communicating their expertise to staff and proved invaluable in setting up channels of communication. During these workshops, everyone had the opportunity to air their views and work together to identify problem areas and seek solutions.

## **Developing guidelines**

36. With the benefit of hindsight, it is clear that what was expected of the Committee in terms of sheer workload was totally unrealistic. Certainly it could not reasonably have been foreseen that more than 7000 amnesty applications, relating to more than 14 000 different incidents, would be submitted. Nor could anyone have predicted how much work would be involved in perusing and investigating these applications. For example, was it really reasonable to expect that a single application dealing with incidents involving hundreds of victims and implicated persons – that had, moreover, engaged a court for well over three years – could be dealt with in a matter of days?

37. As has already been mentioned, the Committee began its work with no formal guidelines or prescriptions on how it should prepare applications. Over time, however, it evolved guidelines for its work: some through a process of logical reasoning, others through trial and error.
38. For the purposes of this chapter, the process will be discussed in stages, bearing in mind that none of these processes existed in isolation. At times, indeed, they were intertwined, and at others, their sequence was inverted.

### ***First stage***

39. The initial perusal of the applications was done by the administrative staff, who checked the forms to ascertain whether they were properly completed, signed and attested to. If not, they were returned to the applicants to be rectified. Those forms that complied with the formal requirements were checked to establish whether they had been submitted before the deadline of 30 September 1997. Applications submitted after this date could not be considered by the Committee and were returned to the applicant with an appropriate note.

### ***Second stage***

40. At the second stage, the evidence analysts perused the applications in order to establish which of the following was the case:
  - a The act in respect of which amnesty was sought was not committed within the prescribed period. If so, the Committee could not consider the application and the applicant would be informed accordingly.
  - b It appeared, *prima facie*,<sup>22</sup> that the application did not relate to an act associated with a political objective, or that the act was committed for personal gain or because of malice, ill will or spite towards the victim. In such cases the application was submitted to the Committee for consideration in chambers.<sup>23</sup> If the Committee was satisfied that the application did not meet the requirements of the Act, amnesty was refused and the applicant was informed accordingly. In certain cases, it might not be possible for the Committee to make a decision without further investigation. Such an investigation would be co-ordinated by an evidence analyst.
  - c It appeared, *prima facie*, that the application related to an act associated with a political objective, but that such an act did not constitute a gross violation of human rights. In such cases, the application was submitted to the Committee in chambers. The granting of amnesty could then be considered in the applicant's absence unless further investigation was required.

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<sup>22</sup> On the face of it or at first glance.

<sup>23</sup> These applications were referred to as 'chamber' matters because they were not dealt with by the Committee at a public hearing (see 'Chamber Matters' in Chapter Three of this section).

d It appeared, *prima facie*, that the application related to an act that was associated with a political objective and that constituted a gross violation of human rights. The Committee would then direct that the application be scheduled for a public hearing, subject to further investigation.

41. It must be emphasised that, in making each of the above decisions, the Committee was the sole judge and was also intimately involved in the process of categorising the applications. A panel of at least three Committee members, of whom one had to be a judge, made the final decision to grant or refuse amnesty in each case.

### ***Third stage***

42. The third stage entailed completing the required investigation before proceeding to finalise the application. This was one of the most difficult and time-consuming stages. Firstly, the level and intensity of the investigation depended on the circumstances surrounding each specific application. Moreover, some applications related to more than one incident, each requiring its own investigation. Depending on the facts that needed to be investigated, investigations varied from the mere confirmation of one fact to an in-depth investigation that might last several months.

43. Investigations required by the Committee could include:

- a obtaining further and/or additional information from an applicant;
- b corroboration that an incident had occurred;
- c obtaining prison records from the Department of Correctional Services;
- d obtaining relevant court records (indictments and judgments) from the Department of Justice, reports from the then attorneys-general, and/or police dockets from the SAPS;
- e obtaining confirmation from a political party or liberation movement about whether an applicant was a member or supporter; and
- f obtaining statements about the incident in question from victims, implicated persons and/or witnesses.

44. Over and above the information obtained in the course of its investigation, the Committee also used information gathered by the Commission's research department and the Human Rights Violations Committee (HRVC).

45. The investigations and corroboration were done on behalf of the Committee by a group of dedicated investigators. At its peak, the Committee enjoyed the services of thirty-two investigators. The investigative component consisted of contracted

officials, officials seconded from the departments of Correctional Services and Defence, officials from the SAPS and a number of international investigators seconded to the Commission by their respective governments. Investigations were done in all parts of the country and even overseas. Investigators travelled literally hundreds of thousands of kilometres over all nine provinces. In some cases, isolated areas could be reached only on horseback or on foot.

#### ***Fourth stage***

46. Upon completion of the required investigations and after final perusal by the evidence analyst, an application was ready for submission to the Committee and would be dealt with either in chambers or at a public hearing.
  
47. In the early stages of the Committee's life, applications considered at public hearings were dealt with on an individual basis. Later it emerged that duplication could be avoided and staff expertise used more efficiently if applications were clustered into political groupings and geographical regions. This allowed the Committee to hear more than one applicant in the same region or with respect to the same incident. This not only assisted the Committee in evaluating the evidence of various applicants, but also assisted the Commission in obtaining the fullest possible picture in respect of the incident(s) concerned. The groupings into which the applications were divided included:
  - a Members or supporters of the African National Congress (ANC) and aligned organisations;
  - b Members or supporters of the Pan Africanist Congress (PAC) and aligned organisations;
  - c Members or supporters of the Inkatha Freedom Party (IFP) and aligned organisations;
  - d Members of the former security forces; and
  - e Members or supporters of the white right-wing organisations.
  
48. In an effort to assist the Committee, applications were initially submitted to the chief leader of evidence for quality control before submission to the Committee. Incomplete applications were referred back to the analyst with further instructions. If the application did not involve a gross human rights violation, or where it appeared, *prima facie*, that the application was not likely to be successful, the application was referred to the Committee to be dealt with in chambers. If the application involved a gross human rights violation and it appeared, *prima facie*, that amnesty was likely to be granted, the application was handed to an evidence leader to prepare for a public hearing. When the chief leader of evidence resigned during 1998, the quality control function was taken over by members of the Committee.

### *Fifth stage*

49. The leader of evidence was responsible for putting before the Committee all the relevant evidence it might require in order to come to a decision as to whether or not amnesty should be granted. The leader of evidence was also responsible for ensuring that all the necessary investigations were done and that all relevant documentation was available before a hearing was scheduled.
50. The scheduling of an application was a complex issue. Various factors that could influence – and indeed determine – the scheduling needed to be taken into account. These included:
- a the place where the incident (the focus or subject matter of the hearing) took place, so that the local public could attend;
  - b the location of the applicant at the time of the scheduled hearing (if the applicant was in prison, the necessary arrangements had to be made so that s/he could attend);
  - c the location and availability of victims, so that they could attend the hearing;
  - d whether other similar applications should or could be heard simultaneously;
  - e the availability of the necessary logistical services, namely a suitable and secure venue, translating facilities, recording facilities, accommodation, transport and witness protection services; and
  - f the availability of legal representatives of the applicants, victims and/or implicated persons. Some hearings involved no fewer than nineteen legal representatives.
51. There were times when four panels of the Committee sat simultaneously at four different locations, making the scheduling of applications for public hearings a challenging task. Once a hearing was finally scheduled, the chairperson of the Committee assigned a panel consisting of a judge and at least two other members to preside over the hearing. The leader of evidence was then responsible for the following:
- a Issuing the necessary notices in terms of section 19(4) of the Act, and informing the applicant, victims and implicated parties of the date and venue at least fourteen days before the hearing.
  - b Requesting and confirming all logistical requirements and arrangements. As far as was practical and reasonable, the Committee was responsible for providing transport and accommodation for victims.
  - c Preparing the hearing documentation. This bundle contained all the applications and relevant documentation and could vary from fifty to 500 pages. Copies of these bundles were made available to all the members of the panel of the Committee, applicants, victims and implicated persons.

- d Arranging for the services of a legal representative for those applicants and victims who were not legally represented.
  - e Arranging and conducting a pre-hearing conference with all the legal representatives involved. The purpose of this conference was, amongst other things, to identify and limit the issues, determine matters that were common cause and exchange any documents to be used at the hearing.
52. Once a hearing had been scheduled, it was the task of the Committee's logistics officers to take care of all the logistical arrangements. The success of a hearing depended to a very large extent on proper logistical arrangements. The logistics officer was normally the first official with whom the applicants, victims, implicated persons, legal representatives and media made contact. Thus apart from performing their logistical responsibilities, logistics officers had to double as public relations officers. Hearings could last anything from three days to eight weeks, and the logistical arrangements normally had to include:
- a Securing an appropriate and secure venue for the hearing. In determining a venue, one of the factors that needed to be taken into account was its accessibility to the various parties and the public. In line with the Committee's decision to allow the community concerned to be part of the hearing, a venue was secured, as far possible, in the area where the incident in question had occurred.
  - b Taking care of the required security arrangements.
  - c Taking care of travel, accommodation and catering arrangements for members of the Committee, staff and victims.
  - d Arranging for interpreting services. Honouring the decision of the Commission that everyone should be allowed to give evidence before the Commission in his/her mother tongue, the Committee made use of interpreters contracted by the Commission. At certain hearings, interpretation into no fewer than six languages was required.
  - e Arranging for technical assistance for recording the proceedings and operating the simultaneous interpretation system. Bearing in mind that anything between two and four hearings per week took place simultaneously, proper planning was essential to ensure that these services were always available.
  - f Arranging for telephone, faxing and photocopying facilities.
  - g Securing the services of 'briefers' – qualified mental health workers who were responsible for attending to the emotional well-being of victims for the duration of the hearing. Briefers played an invaluable role in assisting grief-stricken victims and relatives. At times, the demand for these services was so high that logistics officers and evidence leaders had to double as briefers.

- h Ensuring that all recordings were submitted to the transcribers for transcribing.
  - i Submitting a reconciliation of all expenses for audit by the finance department at the completion of the hearing.
53. At its inception, the Committee decided that, as an adjudicative body, it would not issue media statements or give interviews about its work or decisions. It also decided that the Commission's media department and the Committee's executive secretary would deal with all communications with the media. The Committee initially had reservations about media coverage of its hearings, especially television coverage. It felt that this might deter people from applying for amnesty or from giving evidence. Concern was also expressed that legal representatives might be tempted to exploit to their advantage the public exposure that television coverage affords.
54. Notwithstanding these concerns, the Committee agreed, albeit reluctantly, that full media coverage would be allowed during hearings, provided that the Committee had the discretion to disallow or halt coverage when it was in the interests of justice to do so.
55. It emerged, however, that the media were to play a very constructive and important role in covering amnesty hearings, and an excellent working relationship developed between the media and the Committee. The role of the media in communicating the essence of the amnesty process and involving the public in the proceedings cannot be underestimated; and it must be said that the process was considerably enriched by this contribution.

***Sixth stage: Hearings***

56. The hearings of amnesty applications were the only publicly visible part of the amnesty process. Not only did they physically take place in public, but the hearings were also extensively covered by the print and electronic media.
57. The Act provided that the Committee should determine the procedural rules regulating public hearings of amnesty applications. This was done over a period of time, taking into account the practicalities of the process. In general the guidelines were as follows:
- a Any person giving evidence was required to do so under oath or affirmation.
  - b The first to testify were the applicants, followed by any witnesses they wished to call.

- c The next to give evidence were the victim(s) or the relatives of the victim(s) and any witnesses they wished to call. Victims who were unable to contribute towards the merits were allowed to make a statement rather than testify if they so preferred. These statements normally dealt with contextual or background factors and subjective views and experiences, often critical to issues of reconciliation and closure for victims.
  - d If applicable, the Committee could then call witnesses, either of its own volition or, if it was seen to be in the interest of justice, at the request of any person who had a material interest in the proceedings. The Committee could also allow any implicated person an opportunity to rebut any allegations against him/her.
  - e The Committee had the discretion to allow cross-examination of any person giving evidence before it by any interested person or her/his legal representative. The Committee could limit the scope and extent of cross-examination.
  - f At the conclusion of the evidence, the applicant or his/her legal representative was entitled to address the Committee. This would be followed by an address by the other interested parties or their legal representatives. The Committee could, within reasonable limits, restrict the scope and duration of the addresses, which were required to be succinct and to the point.
  - g A person giving oral evidence was entitled to do so in any of the official languages.
  - h Any person who wished to make use of any document during the hearing had to ensure that sufficient copies were furnished to the Committee and to all other known interested parties in good time. This rule was more strictly applied where the person was legally represented.
  - i Evidence was limited to issues that were material to a proper consideration of the application.
58. The Committee could, in its sole discretion, vary any of these procedures, which did not in any way detract from the general competence of the Committee or its inherent powers.
59. The decision to allow cross-examination of any applicant or witness could be influenced by the following factors:
- a whether or not the cross-examiner was opposing the application;
  - b whether or not the concerns of implicated persons could be adequately met by an affidavit in which they stated their version;
  - c whether or not the purpose of the cross-examination was to show that the applicant was not entitled to amnesty;

- d whether or not the cross-examination was directed at specific requirements prescribed by the Act in order to qualify for amnesty; and
  - e whether or not the interests of justice demanded that cross-examination be allowed and to what extent it should be allowed.
60. The decision not to promulgate formal rules of procedure allowed the Committee to adopt a flexible approach that was more appropriate to the unique nature of the amnesty process. The guidelines adopted by the Committee enabled it to use its sole discretion in determining the order of proceedings and to rule on any relevant point of law or matter during the course of a hearing. It was thus able to allow:
- a affidavits to be submitted to the panel from persons not present at or available to attend the hearing;
  - b documents to be submitted as evidence during the course of the proceedings;
  - c hearsay evidence to be heard and its evidentiary value determined; and
  - d cross-examination, having due regard to time constraints, fairness, relevance and the purpose of such cross-examination.
61. Moreover, persons (or legal representatives acting on their behalf) who challenged or contested the allegations contained in affidavits submitted to the Committee could do so by filing written representations or by submitting an affidavit within a reasonable period of time after the hearing.
62. The Committee could, on application by a party, take cognisance of evidence given at judicial proceedings, provided that the party sufficiently specified the relevant portion of the evidence concerned, and allow persons implicated by evidence given during the course of the hearing to make representations within a reasonable period of time after the hearing.

### ***Seventh stage***

63. The final stage in dealing with an application was the delivery of a decision by the Committee and the consequent notification of all parties concerned.
64. In certain instances, the Committee gave *ex tempore* (immediate) decisions at the conclusion of a hearing. In the majority of the cases, however, the Committee only decided the matter at a later stage.
65. The reason for this is that many of the hearings stretched over a period of days and the evidence ran to thousands of transcribed pages. Thus, both the Committee and the legal representatives needed time to go through the evidence.

In certain instances, legal representatives required a reasonable period to submit written heads of argument and Committee members needed time to discuss the evidence and prepare a decision.

66. As soon as a decision was reached, it was handed to the executive secretary, who promptly notified the applicant and all other interested parties of the outcome and provided them with a copy of the decision as well as a copy of the proclamation that would be published in the Government Gazette. Known victims and implicated persons were notified through their legal representatives. Where applicable, notifications were also sent to the Department of Correctional Services, the head of the prison concerned, the National Prosecuting Authority and the registrar of the court concerned. The Commission was similarly notified.

## **CHALLENGES FACED BY THE COMMITTEE**

67. The Committee was faced with various challenges, not all of a substantial nature. Only those factors that made it difficult for the Committee to do its work will be reflected upon here.

### **Reviews**

68. No provision was made in the Act for an appeal against any decision of the Committee. Once the Committee had made its decision and informed the applicant, the Committee was *functus officio* (its function fulfilled) and could not review its decision or change it. The only remedy available to those who were dissatisfied with the decision (whether applicant, victim or interested party) was to approach the High Court to review the decision.
69. At the time of compiling this report, eight review applications had been filed against the decisions of the Committee. In two instances, the applications succeeded and the matters were referred back to the Committee for reconsideration. In three instances, the applications were dismissed. The remaining three instances were still pending at the time of publication. (These reviews are dealt with in more detail in Chapter Four, 'Legal Challenges'.)

### **Operational challenges**

70. Operational challenges had the most profound impact on the ability of the Committee to finish a huge workload within the shortest period possible. Some of the most significant are mentioned below:

## **Staff**

71. All members of staff were employed in a temporary capacity and on a contractual basis. Due to the lack of employment security and uncertainty about exactly when the process would end, staff members were understandably constantly on the lookout for permanent employment elsewhere. Apart from a basic salary, staff members were offered no incentives, such as service bonuses, causing the Committee to lose experienced staff on a regular basis. It became increasingly difficult to fill vacancies, as it was almost impossible to find experienced and skilled people willing to enter into contracts for limited periods without being able to offer them substantial incentives.

## ***Budgetary constraints***

72. The Committee did not have its own budget and had to compete with the rest of the Commission for available funds. More funds would certainly have gone a long way towards making it possible to employ more staff and so reduce some of the pressure on the Committee.

## ***Preparation of applications***

73. The preparation of an application entailed substantially more than simply reading it and submitting it to the Committee for finalisation. The information contained in applications was, as a rule, very scant and had to be supplemented in one way or another. The vast majority of applicants did not have the luxury of a legal representative to assist them in completing the application form, and those who had lawyers usually divulged as little as possible. This necessitated a continuous exchange of correspondence between the Committee and applicants to elicit the necessary information.
74. Approximately 65 per cent of the applications were submitted by people who were in custody and had limited means of obtaining information. In most of these instances, court and police records had to be obtained. Delays were frequently experienced in obtaining records from the responsible institutions and, in many instances, the investigators had to go personally to collect them.
75. Corresponding with applicants in custody was often very difficult, since they were often transferred from one prison to another without the Committee being informed. This resulted in correspondence being despatched to the wrong address and reaching them only after a delay.

76. Some of the incidents mentioned by applicants had never previously been investigated by the police or dealt with at a trial. Consequently, the Committee had to investigate these incidents long after the event had taken place.
77. Establishing the identity and location of implicated persons, and especially of victims, was a very difficult and time-consuming task. The print and electronic media had to be used. The cost of placing even a single newspaper advertisement per missing person could add up to a considerable amount of money.
78. Investigative work took investigators all over the country, in many cases to remote and inaccessible areas. Investigators often had to contend with uncooperative victims and implicated persons, but all information furnished by applicants had to be verified.
79. The co-operation of political parties with the amnesty process was at times disappointing. Getting them simply to confirm an applicant's membership or provide information about an incident or policy could take anything between two and six months. In the meantime, the Committee was left to contend with irate and frustrated applicants.

### ***Hearings***

80. The task of scheduling – and adhering to a planned schedule – was complicated by a number of factors, including the difficulty of finding a suitable venue. Not all institutions were willing to make accommodation available for a hearing, especially for periods of up to two weeks or longer. Factors that had to be taken into account in the choice of a venue included financial constraints, security, and the accessibility of the venue to applicants, victims and the general public. Another difficulty was finding a date that suited the various legal representatives representing the applicants, the implicated persons and victims. In addition, lawyers tended to treat hearings as criminal trials, with the result that the cross-examination of applicants sometimes continued for days.
81. These are but some of the challenges the Committee faced. Due to dedication and effort on the part of everyone involved, none of these challenges proved insurmountable. Notwithstanding these less than optimum circumstances, the Committee was able to complete its mandate successfully by 31 May 2001. (...p36)