



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.³¹ The HRVC was required to make findings confirming that persons making statements were victims of gross human rights violations as defined in

³¹ 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 Committee³² to complete the outstanding work of the HRVC. The Commissioner was accordingly appointed by the Minister.³³

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.

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

³³ 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 Commission³⁴, 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.

³⁴ 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 Naisson 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.