



Volume **SIX** • Section **FIVE** • Chapter **THREE**

**Findings and
Recommendations
HOLDING THE ANC
ACCOUNTABLE**

Holding the ANC Accountable

■ INTRODUCTION

1. In its five-volume Final Report, the Truth and Reconciliation Commission (the Commission) fully endorsed the international law position that apartheid was a crime against humanity. It also recognised that both the African National Congress (ANC) and the Pan Africanist Congress (PAC) were internationally recognised liberation movements that conducted a legitimate struggle against the former South African government and its policy of apartheid.
2. The Commission noted that the ANC made submissions to the Commission, including handing over a report on internal inquiries it had conducted in exile. It is important to restate that the ANC was, in all respects, more frank and co-operative with the Commission than either the state or the PAC.

FINDINGS

3. The Commission noted that, of the three main parties to the conflict, only the ANC committed itself to observing the tenets of the Geneva Protocols and, in the main, conducting the armed struggle in accordance with international humanitarian law. This report acknowledges the commitment of the ANC to upholding the Geneva Protocols as well as its comparative restraint in conducting the armed struggle – at least in terms of the manner in which it identified its targets and its leadership’s decision to instruct its cadres to abandon the land-mine campaign when it became clear that it was resulting in the deaths and injuries of innocent civilians.
4. However, the Commission drew a distinction between the conduct of a ‘just war’ and the question of ‘just means’. The Commission found that, whilst its struggle was just, the ANC had, in the course of the conflict, contravened the Geneva Protocols and was responsible for the commission of gross human rights violations. For this reason the Commission held that the ANC and its organs – the National Executive Council (NEC), the Secretariat and its armed wing Umkhonto we Sizwe (MK) – had, in the course of their political activities

and in the conduct of the armed struggle, committed gross human rights violations for which they are morally and politically accountable.

THE POSITION AFTER THE HANDING OVER OF THE FINAL REPORT

5. As mentioned above, the Commission wishes to place on record that it sought in its findings to draw a distinction between a 'just war' and 'just means'. It did not criminalise the struggle. It was, however, obliged in terms of its mandate set out in its founding Act⁵⁶ to determine the question of responsibility for the commission of gross human rights violations.
6. On the eve of handing over its Final Report, the ANC sought to interdict the Commission from doing so. The essence of the application was to challenge the Commission's interpretation of the *audi alterem partem* rule and to compel the Commission to meet with it to discuss the proposed findings. This court challenge is dealt with in Section One, Chapter Four of this volume. The High Court of the Western Cape found against the ANC, thereby allowing the Commission to hand its report over to President Mandela. There was, however, a great deal of acrimony between the Commission and the ANC about the findings made. Yet the fact is that the Commission said nothing that had not already been brought to the Commission by the ANC itself. It was indeed the ANC's disclosures and acknowledgment that gross human rights violations had been committed in the conduct of the struggle that assisted the Commission in coming to its conclusions.
7. In February 1999, at a sitting of both houses of parliament convened to discuss the Report, Deputy President Thabo Mbeki reiterated his complaint that the ANC had not been able to meet with the Commission to discuss its findings against the ANC. He made the following statement:

What we had sought to discuss with the TRC pertained to such obviously important matters as the definition of the concept of gross violations of human rights in the context of a war situation and other issues relating to war and peace and the humane conduct of warfare. One of the central matters at issue was, and remains, the erroneous determination of various actions of our liberation movement as gross violations of human rights, including the general implication that any and all military activity which results in the loss of civilian lives constitutes a gross violation of human rights. Indeed, it could also be said that the erroneous

⁵⁶ The Promotion of National Unity and Reconciliation Act No. 34 of 1995, (the Act).

*logic followed by the TRC, which was contrary even to the Geneva Conventions and Protocols governing the conduct of warfare, would result in the characterisation of all irregular wars of liberation as tantamount to a gross violation of human rights. We cannot accept such a conclusion*⁵⁷.

8. The Commission is not required to respond to criticism of its findings by the ANC and other critics. However, at the time that the findings of responsibility were made, the work of the Amnesty Committee was not complete and there was some expectation that the Commission would re-examine these findings in the light of the amnesty decisions and the evidence received through this process. In doing so, it is necessary to deal with both international law and international humanitarian law.

INTERNATIONAL HUMANITARIAN LAW

9. The Geneva Conventions were adopted in 1949 and South Africa acceded to them in 1952. In 1977, additional Protocols I and II were adopted. In 1980, the ANC deposited a declaration with the President of the International Committee of the Red Cross (ICRC) committing the ANC to international humanitarian law.⁵⁸
10. The principles of international humanitarian law that apply to the situation in South Africa are set out in Chapter One of this section. The chapter also deals with the ANC's declaration that it would govern the conduct of its struggle in accordance with international humanitarian law.

Moral equivalence

11. One of the criticisms the ANC levelled at the Commission was that of 'moral equivalence'. The ANC claimed that the Commission equated the actions of those who fought a just cause against apartheid with those who fought in defence of an unjust cause.
12. The Commission's position has always been⁵⁹ that it was obliged by statute to deal even-handedly with all victims. Its actions in this respect were guided, amongst other things, by the principle that victims should be treated equally, without discrimination of any kind. Despite this, however, the Commission did not suspend moral judgment and drew a distinction between the actions of the state and those of the liberation movements.

⁵⁷ Hansard: Feb 5–March 26 1999.

⁵⁸ See the Appendix to this chapter.

⁵⁹ See Volume One.

13. When dealing with the question of even-handedness and moral equivalence (whether making its findings against the state, the liberation movements or other parties), the Commission relied on internationally accepted human rights principles. In order to arrive at a definition of a gross human rights violation, the Commission relied on the definition contained in the Act and, in making its assessment, took into account the political context and the circumstances within which the violation had taken place.
14. This did not, however, mean that the Commission treated the conflict as a conflict between equal parties. The Commission recognised that the might of the state, with all its power and legitimacy (however ill-conferred) was in a far stronger position than were the liberation movements.
15. The Commission also never characterised the war that the former state waged against its own people as either morally or legally justified.
16. The Commission also took care not to use apartheid definitions of legal conduct.

IUS IN BELLO AND IUS AD BELLUM

17. The ANC also criticised the Commission for failing to deal adequately with the fact that the apartheid state acted in breach of the Geneva Conventions and the Additional Protocols. According to this view, the actions that the state considered to be legitimate were war crimes. For this reason it is important to elucidate the distinction between a 'just war' and 'just means'.
18. In its five-volume Final Report, the Commission stated the following:

The application of some of the principles and criteria of just war theory have proved difficult and controversial, especially when dealing with unconventional wars, that is wars of national liberation, civil wars and guerrilla wars within states. The distinction between means and cause is a dimension of just war theory that cannot be ignored. Often this distinction is made in terms of justice in war (ius in bello) and justice of war (ius ad bellum).
19. In dealing with the doctrine of justice in war, the Commission stated:

There are limits to how much force may be used in a particular context and restrictions on who or what may be targeted. Two principles dominate this body of law:

The use of force must be reasonably tailored to a legitimate military end;

Certain individuals are entitled to specific protection, making a fundamental distinction between combatants and non-combatants. Thus even an enemy soldier who is armed and ready for combat may be harmed and even killed, but a civilian or a sick, wounded or captured soldiers may not be harmed.

20. The Report stated further:

The Commission's confirmation that the apartheid system was a crime against humanity does not mean that all acts carried out in order to destroy apartheid was necessarily legal, moral and acceptable. The Commission with the international consensus that those who were fighting for a just cause were under an obligation to employ just means in the conduct of this fight.

As far as justice in war is concerned, the framework within which the Commission made its findings was in accordance with international law and the views and findings of international organisations and judicial bodies. The strict prohibitions against torture and abduction and the grave breach of killing and injuring defenceless people, civilians and soldiers 'hors de combat' required the Commission to conclude that not all actions in war could be regarded as morally or legally legitimate, even where the cause was just.

21. Given the ANC's own commitment to upholding the Geneva Conventions and the various principles of international humanitarian law – as well as its own Declaration in 1980 – it is difficult to understand why it wishes to pursue this argument. The Commission, however, stands by this distinction. Hans-Peter Gasser, a former Senior Legal Adviser to the ICRC has stated:

The rules of international law apply to all armed conflicts, irrespective of their origin or cause. They have to be respected in all circumstances and with regard to all persons protected by them, without any discrimination. In modern humanitarian law, there is no place for discriminatory treatment of victims of warfare based on the concept of 'just war'.

22. Professor Kader Asmal, a member of the ANC National Executive and a leading expert in international law, explained the ANC's commitment to the Geneva Conventions as follows:

The applicability of the humanitarian rules of war to conflicts between an incumbent state and a national liberation movement fighting for self-determination is

clearly accepted. The Protocols to the 1977 Geneva Conventions are intended to apply to such a conflict and were subscribed to by the ANC in 1980. Although the Apartheid state did not ratify the relevant Protocol, that Protocol merely codified pre-existing contemporary law on the subject. Thus both belligerents in South Africa were under an obligation to treat the conflict as one governed by the law of war. Under Article 85, paragraph 5 of the Geneva Protocol, 'grave breaches' of the Convention and Protocol constitute war crimes.⁶⁰

23. The report of the Motsuenyane Commission on conditions in the ANC camps in Angola spelt out the ANC's obligations under international humanitarian law, as well as the applicability of Article 75 of Protocol I of 1977 and Common Article 3 of the Geneva Conventions on the conditions and treatment of MK prisoners in their custody. The Motsuenyane Commission also referred to the African Charter on Human and People's Rights and the International Covenant on Civil and Political Rights. This report was accepted by the ANC and its findings were referred to the Commission.
24. Thus a just cause cannot mean that all restraint in the conduct of the war should be allowed to fall away. Although the cause of the liberation movements amounted to a just war, certain incidents that impacted on those who were *hors de combat* and 'civilians' were considered to be breaches of international law. A number of incidents involving indiscriminate bombings that led to the injury and death of civilians are regarded in law as breaches, the responsibility for which the group or movement that committed these acts must acknowledge.
25. This debate is a crucial one in modern times as the distinction between 'freedom fighter' and 'terrorist' becomes more blurred.
26. Again, the principle that derives is that the fact that the liberation movements' cause was just does not mean that they were not required to act justly in the conduct of that war. Thus the *ius in bello* cannot be separated from the *ius ad bellum*.
27. In essence, the effect of this distinction is to hold individuals, organisations, states and organs of the state accountable for their actions. Thus military commanders cannot evade the consequences of their orders; nor can subordinates evade punishment or accountability on the basis of having followed orders. The

⁶⁰ Asmal, K, Asmal L, and Roberts, RS, *Reconciliation through Truth: A Reckoning of Apartheid's Criminal Governance*. Cape Town, David Phillip, 1996.

responsibility to act within the boundaries of international humanitarian law binds all actors, both state and non-state parties. According to Professor Kader Asmal:

Traditionally, these two branches of international law have addressed separate issues: international humanitarian law has been concerned with the treatment of combatants and non-combatants by their opponents in wartime, while international human rights law has been concerned with the relationship between states and their own national son peacetime. Yet, even in earlier times, they shared a fundamental concern: a commitment to human dignity and welfare, irrespective of the status of the individual (combatant or non-combatant) and of the circumstances under which his rights and responsibilities are to be exercised (peacetime or wartime)⁶¹.

SPECIFIC FINDINGS

28. The Commission made its findings based, in the main, on frank and substantial submissions by the ANC and the testimony of both the political and military leadership at public hearings. In addition, the Commission took into account the statements of victims and testimony received from amnesty applicants and during section 29 hearings.

29. The Commission stated that:

The ANC has accepted responsibility for all actions committed by members of MK under its command in the period 1961 to august 1990. In this period there were a number of such actions – in particular the placing of limpet and land-mines – which resulted in civilian casualties. Whatever the justification given by the ANC for such acts – misinterpretation of policy, poor surveillance, anger or differing interpretations of what constituted a ‘legitimate military target’ – the people who were killed or injured by such explosions are all victims of gross human rights violations of human rights perpetrated by the ANC. While it is accepted that targeting civilians was not ANC policy, MK operations nonetheless ended up killing fewer security force members than civilians.

⁶¹ Ibid.

30. With respect to the actions of MK during the armed struggle, the Commission found that:

Whilst it was ANC policy that the loss of civilian life should be avoided, there were instances where members of MK perpetrated gross violations of human rights in that the distinction between military and civilian targets was blurred in certain armed actions, such as the 1983 Church street bombing of the SAAF headquarters, resulting in gross violations of human rights through civilian injury and loss of life.

In the course of the armed struggle there were instances where members of MK conducted unplanned military operations using their own discretion, and, without adequate control and supervision at an operational level, determined targets for attack outside of official policy guidelines. While recognising that such operations were frequently undertaken in retaliation for raids by the former South African Government into neighbouring countries, such unplanned operations nonetheless often resulted in loss of life, amounting to gross violations of human rights. The 1985 Amanzimtoti shopping centre bombing is regarded by the Commission in this light.

In the course of the armed struggle the ANC through MK planned and undertook military operations which, though intended for military or security force targets sometimes went awry for a variety of reasons, including poor intelligence and reconnaissance. The consequences in these cases, such as the Magoo Bar incident and the Durban esplanade bombings were gross violations of human rights in respect of the injuries to and loss of lives of civilians.

While the Commission acknowledges the ANC's submission that the former South African government had itself by the mid-1980's blurred the distinction between military and 'soft' targets by declaring border areas 'military zones' where farmers were trained and equipped to operate as an extension of military structures, it finds that the ANC's landmine campaigns in the period 1985 –1987 in the rural areas of the Northern and Eastern Transvaal cannot be condoned, in that it resulted in gross violations of the human rights of civilians including farm labourers and children, who were killed or injured, The ANC is held accountable for such gross human rights violations.

Individuals who defected to the state and became informers and/or members who became state witnesses in political trials and/or became Askaris were often labelled by the ANC as collaborators and regarded as legitimate targets to be killed. The Commission does not condone the legitimisation of such individuals as military targets and finds that the extra-judicial killings of such individuals constituted gross violations of human rights.

The Commission finds that, in the 1980's in particular, a number of gross violations of human rights were perpetrated not by direct members of the ANC or those operating under its formal command but by civilians who saw themselves as ANC supporters. In this regard, the Commission finds that the ANC is morally and politically accountable for creating a climate in which such supporters believed their actions to be legitimate and carried out within the broad parameters of a 'people's war' as enunciated by the ANC.

31. If these findings are analysed, it can be seen that they fall into the following categories:
 - a attacks ostensibly on military targets but where civilians are killed and injured;
 - b unplanned and indiscriminate attacks on targets outside of official policy guidelines and which affect civilians;
 - c planned military operations that go wrong and where civilians are killed;
 - d the deliberate targeting of individuals labelled as traitors;
 - e attacks carried out by MK on both military and civilian targets, and
 - f attacks carried out by supporters of the ANC. In this regard, actions by UDF supporters and the SDUs are pertinent.

32. If one examines each of these categories in terms of the Geneva Conventions and Protocol I⁶², they are clearly defined as grave breaches.
 - a Articles 50, 51, 130 and 147 specify the following grave breaches of the four Geneva Conventions respectively: wilful killing; torture or inhuman treatment; biological experiments; wilfully causing great suffering; causing serious injury to body or health, and extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly.
 - b The following are considered to be grave breaches in terms of Articles 130 and 147 of the third and fourth Geneva Conventions: compelling a prisoner of war or a protected civilian to serve in the armed forces of the hostile power, and wilfully depriving a prisoner of war or a protected person of the rights of fair and regular trial prescribed in the conventions.
 - c The following are considered to be grave breaches of the fourth Geneva Convention in terms of Article 147: unlawful deportation or transfer; unlawful confinement of a protected person, and taking of hostages.

⁶² See Appendix 2 to Chapter One of this section.

- d Articles 11 and 85 of Protocol I specify what constitutes a grave breach. For our purposes, the following acts, when committed wilfully and if they cause death or serious injury to body and health constitute grave breaches: making the civilian population or individual civilians the object of attack; launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects; launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects; making non-defended localities and demilitarised zones the object of attack; making a person the object of an attack in the knowledge that he is *hors de combat*, and depriving a person protected by the Conventions or by Protocol I of the rights of a fair and regular trial.
33. An analysis of the information received by the Commission confirms that there were no actions of note taken by MK inside South Africa during the period 1964 to 1975.
34. The period 1976 to 1984, however, saw a steady rise in the number of armed attacks. The Commission recorded a total of 265 incidents in this regard.
35. Another notable feature of this period are attacks on police stations and police officers, who were deemed to be collaborators and were therefore seen as legitimate targets for execution.
36. David Simelane and Obed Masina, for example, were granted amnesty for the killing of Sergeant Orphan Hlubi Chapi outside his Soweto home in June 1978. It was, however, the formation of the ANC Special Operations Unit in 1979 that led to the launch of several high-profile attacks on police stations, state infrastructure and a major attack on SADF personnel, namely the Church Street bombing. Here a car bomb placed outside the South African Air Force headquarters in Pretoria led to the deaths of nineteen people. In terms of the numbers of casualties, this was the most devastating attack by MK in its entire history. The Commission received amnesty applications for a total of seventy-nine incidents carried out by this unit during this period.⁶³

⁶³ See Section Three, Chapter Two in this volume.

37. The amnesty applications reveal that, whilst orders were given in certain cases, targets were for the most part selected by the unit in question. For example, Mr Maake, a member of the Nchabaleng unit which operated around Kwandabele, was responsible for the death of a local police officer. Maake testified at his amnesty hearing that decisions about specific operations were taken by the unit itself. Mr Shoke, a member of another unit, testified that:

What you must understand that guerrillas as opposed in fact to conventional forces, we exercise what we call command initiative, you rely on the initiative of the individual and everybody in MK was being prepared in fact to become a Commander.

38. Whilst some units testified to the fact that decisions were taken by consensus, there is no doubt that that a number of civilians were killed because of the individualised nature of target selection. In addition, assassinations frequently targeted police officers or individuals perceived to be collaborators with the former state. For example, the members of the elimination unit ('Icing Unit') engaged in six operations, including three assassinations, before they were caught in September 1986.
39. Evidence before the Commission in respect of targets indicates that attacks were aimed primarily at the state and its organs and those who were branded as collaborators, and that it was not ANC policy to engage in operations that deliberately targeted civilians. In his amnesty hearing, Aboobaker Ismail testified as follows:
- We never set out deliberately to attack civilian targets. We followed the political objectives of the African National Congress in the course of a just struggle. However in the course of a war, life is lost, and the injury to and the loss of life of innocent civilians becomes inevitable. The challenge before us was to avoid indiscriminate killing and to focus on security forces.*
40. Yet, despite the stated intentions and the clear policy of the ANC with regard to the selection of targets, the majority of these casualties were civilians.
41. Another facet of MK operations was the targeting of those regarded as collaborators. These included police officers, their family members, councillors, state witnesses in trials, and suspected informers. In terms of the Geneva Conventions and Protocol I to the Conventions, all of these killings are regarded as grave breaches and therefore constitute 'war crimes' in terms of the definitions.

42. In the submission made by the ANC to the Commission in response to its findings, the ANC made it clear that they regarded spies as legitimate targets for killings. In addition, they raised the fact that civilians killed in the course of attacks on military targets were permissible collateral damage.
43. After its Kabwe Conference, the ANC hardened its stance on civilians. The ANC stated in its submission to the Commission that the Kabwe Conference:
- reaffirmed ANC policy with regard to targets considered legitimate: SADF and SAP personnel and installations, selected economic installations and administrative infrastructure. But the risk of civilians being caught in the crossfire when such operations took place could no longer be allowed to prevent the urgently needed, all round intensification of the armed struggle. The focus of the armed operations had to shift towards striking directly at enemy personnel, and the struggle had to move out of the townships to the white areas.*
44. Testimony from amnesty applicants indicates that they clearly saw civilian casualties as a necessary consequence of military operations, almost an acceptable form of collateral damage.
45. It is equally clear that action was rarely taken against operatives or units who were responsible for these breaches of humanitarian law. Whilst the ANC acknowledged in its submission that a number of attacks carried out by MK were not in line with ANC policy, it is clear that the operatives concerned were not censured, nor were they repudiated by the movement. The ANC did, however, seek to educate the rank and file on what constituted ANC policy.
46. There is no doubt, however, that as the number of civilian casualties began to rise, ANC President Oliver Tambo and the leadership of the ANC became gravely concerned. In 1987, Mr Tambo expressed his concern about the number of unnecessary civilian casualties resulting from the landmine campaign and ordered that all cadres be fully educated about ANC policy with regard to legitimate targets. Failure to comply with these orders would be considered violations of policy and action would be taken against offenders.
47. In 1988, the NEC issued a statement on the conduct of the armed struggle and expressed its concern at the recent spate of attacks on civilians. Whilst amnesty applicants were fairly sanguine about the legitimacy of their targets, the political leadership was clearly concerned.

ACTS COMMITTED BY CIVILIANS PRIOR TO 1990

48. While MK operations undoubtedly contributed significantly to resistance activities, particularly in the pre-1990s period, civilian activity inside the country took place on a larger scale. The submission made to the Commission by the Foundation for Equality before the Law cited 80 507 unrest-related incidents in the period 1984 to 1992. It also referred to 979 cases of burning and 'necklacing'.
49. In its five-volume Final Report, the Commission described the United Democratic Front (UDF) as a loose federation that brought together a large number of social, civic and political organisations of differing backgrounds, racial constituencies and political orientations. The purpose of the UDF was to act as an umbrella body for opponents of the state who sought to achieve a non-racial, democratic and unitary state. Whilst its founding document stated that it was not a front for the banned liberation movement, it became increasingly supportive of the ANC.
50. The UDF became the rallying point for a wide range of affiliates comprising youth and civic organisations, scholar and student organisations, church and welfare organisations, trade unions, sporting and cultural organisations, and political and quasi-political organisations. It was able to mobilise very large groups of people for rallies and meetings, which were characterised by powerful oratory and wide-ranging demands for political change.
51. The Commission stated that, from 1985, the UDF sought to dismantle government and security force control and administration. It sought to promote and enact the concept of 'people's power', which envisaged administrative, welfare and judicial functions in the townships being assumed by community-based and sectoral organisations. This included the establishment of forums to administer civil and criminal justice through people's courts.
52. The Commission made the following findings against the UDF:⁶⁴

The Commission acknowledges that it was not the policy of the UDF to attack and kill political opponents, but finds that members and supporters of UDF affiliate organisations often committed gross violations of human rights in the context of widespread State-sponsored or –directed violence and a climate of political intolerance.

⁶⁴ Volume Five, Chapter Six, pp. 246–7.

The UDF facilitated such gross violations of human rights in that its leaders, office bearers and members, through their campaigns, public statements and speeches, acted in a manner which helped create a climate in which members of affiliated organisations believed that they were morally justified in taking unlawful action against State structures, individual members of State organisations and persons perceived as supporters of the State and its structures. Further, in its endorsement and promotion of the ‘toyi-toyi’, slogans and songs that encouraged and/or eulogised violent actions, the UDF created a climate in which such actions were considered legitimate. Inasmuch as the State is held accountable for the use of language in speeches and slogans, so must the mass democratic movement and liberation movements be held accountable.

The Commission finds that factors referred to in the paragraph above led to widespread excesses, abuses and gross violations of human rights by supporters and members of organisations affiliated to the UDF. These actions include:

- *The killing (often by means of ‘necklacing’), attempted killing and severe ill-treatment of political opponents, members of state structures such as black local authorities and the SAP, and the burning and destruction of homes and properties;*
- *The violent enforcement of work stay aways and boycotts of, among others, private and public transport and private retail shops, leading to killing, attempted killing and severe ill-treatment;*
- *Political intolerance resulting in violent inter-organisational conflict with Azapo and the IFP, among others.*

The UDF and its leadership:

- *Failed to exert the political and moral authority available to it to stop the practices outlined above, despite the fact that such practices were frequently associated with official UDF campaigns such as consumer boycotts or campaigns against black local authorities. In particular, the UDF and its leadership failed to use the full extent of its authority to bring an end to the practice of necklacing, committed in many instances by its members and supporters.*
- *Failed to take appropriately strong or robust steps or measures to prevent, discourage, restrain and inhibit its affiliates and supporters from becoming involved in action leading to gross violations of human rights, as referred to above.*

- *Failed to exert sanctions or disciplinary action on member organisations whose members were involved in the gross violations of human rights described above, or failed to urge such member organisations to take appropriate actions against their members.*
 - *The Commission notes that the political leadership of the UDF has accepted political and moral responsibility for the actions of its members. Accordingly the UDF is accountable for the gross violations of human rights committed in its name and as a consequence of its failure to take the steps referred to above.*
53. The Commission based its findings on the evidence it received both through the human rights violations and the amnesty processes. However, partially because the UDF had already disbanded by 1991, and because no central structure existed to encourage amnesty applications, the number of amnesty applications received do not tally with the figures that the Commission received in respect of violations. The Commission received eighty-five applications, which included fourteen acts not considered to be gross human rights violations. The remaining seventy-one applications dealt with offences ranging from arson affecting government property to gross human rights violations in which people were killed.
54. Whilst it was not UDF policy to kill, there is no doubt that the targeting of certain individuals and their families for killing and arson involving their property was tolerated and encouraged in certain quarters. Some of the most shocking incidents took place during this era. Many organisations targeted those they regarded as traitors and collaborators. Police officers, councillors in the former local government, informers and their families were regarded as fair game.
55. For example, in the amnesty application of Mr Mziwoxolo Stokwe for the killing of Mr Skune Tembisile Maarman, Stokwe testified that COSAS identified Maarman as a police informer and stoned him to death. Later he was necklaced. Eight people including Stokwe were charged for his killing. Stokwe and his group also launched attacks on the homes of perceived collaborators, including a school principal and two councillors.
56. When Stokwe discovered that one of the comrades, Ntiki Fibana, had agreed to appear as a witness for the State, the group decided to deal with her in the following way:

We got information that Ms Ntiki was at her home together with the police with intention of removing her property. We rushed to the place and when the police

saw the crowd they drove away, they left Ntiki inside the house. We took her out and set the house alight. Thereafter we stoned her to death and set her alight with the tyre on her neck. No meeting took a decision to kill Ms Ntiki, but we had to deal with the situation immediately as she was there during that conflict moment. After we killed, we had a meeting where we took a decision to cross the borders of South Africa, to Lesotho for military training and to join Umkhonto weSizwe.

57. Whilst these kinds of incidents are considered to be gross human rights violations, they need to be contextualised. At the time, the country was engulfed in violence in which the apartheid state was the primary actor. It had established covert units, including death squads, whose main intention was to assassinate those considered to be political opponents, and was using all its might to crush opposition. Youth were targeted and enticed into entrapment operations. It would have been quite impossible for the UDF leadership to control the violence and actions of groups within communities all over the country. While the leadership may have uttered words of restraint, it is unlikely that they would have been heeded. This context of violence gave rise to some of the worst excesses in our country.
58. In testimony before the Amnesty Committee, Mr Stokwe stated the following:
- As a member of Cosas, when it was said that the country must be ungovernable, those were the means to try and send a message to the government. That is why we are in this present situation today. In a war, if you focus on a certain target and there are stumbling blocks in front of you, you would start with them because we would not be able to reach our goal because they were informers. So in order to reach our target, we had to start with them, so that was our strategy.*
59. Amnesty was also sought for an incident in which a police officer, Mr Benjamin Masinga, was killed by members of UDF affiliated organisations. Masinga was taken from his house, attacked with sticks, stones, bricks and axes rendering him unconscious. He was dragged to a nearby school, was doused with petrol and was then set alight.
60. These and other incidents reveal that the perpetrators believed that they were acting under a broad political directive to eliminate those considered to be a threat to the struggle and the movement. In some instances they had contact with members of MK and the ANC but, even where this had been the case, they

testified that they were not acting under orders. They saw it as their role to make the country ungovernable and to eliminate those who were perceived to be 'collaborators'.

61. There is no evidence of UDF leadership encouraging killing or the commission of gross human rights violations. It is also clear from the testimony before the Commission that they did not play an active role in the commission of gross human rights violations. However, the general clarion call that they made to make the townships ungovernable and to eliminate those who collaborated led to the commission of gross human rights violations for which the leadership of the UDF must accept responsibility.
62. Information that emerged from the hearings of the Amnesty Committee strengthens the findings made by the Commission in its Final Report.

GROSS VIOLATIONS OF HUMAN RIGHTS COMMITTED BY THE ANC IN EXILE

Introduction

63. In its five-volume Final Report, the Commission recorded that it had received the reports of the Stewart, Skweyiya, Sachs and Motsuenyane Commissions of Inquiry. All of these commissions had been appointed by the ANC. The Commission also had sight of the report of the Douglas Commission. These commissions of inquiry investigated allegations of human rights abuses in the ANC camps and in exile. The Commission also received evidence from victims testifying to their experiences both in the camps and in exile.
64. The Commission must also record its appreciation to the ANC for the frank way in which it handled this question during its submissions to the Commission and during the two political party hearings. The disclosures made enabled the Commission to get a sense of the problems encountered when dealing with young people in the camps and how justice was dispensed in the camps. The ANC also handed over a file that dealt with a number of the executions that had taken place in the camps.
65. A number of section 29 hearings took place, during which those named as responsible for abuses were questioned about their role and the prevailing conditions. The Commission received twenty-one amnesty applications from

members of the ANC's security department. However, nine applications were later withdrawn. This deprived victims of the opportunity to find out what had happened to their loved ones.

66. The twelve remaining applications included four killings, three cases of negligence that may have contributed to deaths, one shooting and eleven cases of assault of persons in the custody of the ANC. All of these applications were granted. Eight of them were dealt with at a public hearing.
67. Whilst the movement at a leadership level made frank disclosures, the same cannot be said of the welfare desk. The Commission was required to deal with this desk on a daily basis in order to verify information supplied by victims and their families. In more than 250 instances, the Commission was unable to obtain any response from the welfare desk, thereby creating further suspicions in the minds of many families about the deaths or disappearances of loved ones.
68. The death of Mr Thabo Naphtali provides one example of this. In terms of the evidence given to the Commission, he was accidentally shot during a night skirmish in the camp at Viana. Although his family knew that he had gone into exile, the movement neither notified them that he had died nor informed of the circumstances of his death. They discovered these facts only at the amnesty hearing.
69. In terms of international law, the fact that persons died in custody at the hands of the ANC places the responsibility for their deaths on the ANC.
70. The Commission recorded the following findings, on the basis of the evidence before it:⁶⁵

The ANC and particularly its military structures responsible for the treatment and welfare of those in its camps were guilty of gross violations of human rights in certain circumstances and against two categories of individuals, namely suspected 'enemy agents' and 'mutineers'.

The Commission found that suspected agents were routinely subjected to torture and other forms of severe ill treatment and that there were cases of such individuals being charged and convicted by Tribunals without proper attention to due process, sentenced to death and executed. The Commission found that the

⁶⁵ Volume Five, Chapter Six, p. 242.

human rights of individuals so affected were grossly violated. Likewise, the Commission found that the failure to communicate properly with the families of such victims constituted callous and insensitive conduct.

The Commission also found that all so-called mutineers who were executed after conviction by military Tribunal, irrespective of whether they were afforded proper legal representation and due process or not, suffered a gross violation of their human rights.

With regard to the allegations of torture and ill treatment, the Commission found that although torture was not within ANC policy, the security department of the ANC routinely used torture to extract information and confessions from those being held in camps particularly in the period 1979–1989. The Commission noted the various forms of torture detailed by the Motsuenyane commission, namely the deliberate infliction of pain, severe ill-treatment in the form of detention in solitary confinement, and the deliberate withholding of food and water and/or medical care, and finds that they amounted to gross violations of human rights.

71. The Motsuenyane Commission submitted its report to the ANC in August 1993. Its conclusion was that there had been severe abuses in ANC detention camps over a number of years. In one detention camp, the Commission concluded that:

Quatro was intended to be a rehabilitation centre. Instead, it became a dumping ground for all who fell foul of the Security Department, whether they were loyal supporters accused of being enemy agents, suspected spies or convicts. All were subjected to torture, ill-treatment and humiliation far too frequently to achieve its purpose as a rehabilitation centre.

72. The Motsuenyane Commission also found that adequate steps were not taken in good time against those responsible for such violations.

Commentary

73. Testimony before the Amnesty Committee has confirmed that there were abuses in exile. The security department of the ANC routinely used torture and assault as a means to extract information from those it suspected of being enemy agents or dissidents. In those instances where operatives were executed, it is clear that there were some instances of due process being afforded to those accused of offences. In the main, however, due process was given perfunctory observance and these so-called trials cannot be conceived of as remotely

resembling fair trials or hearings. These actions are contraventions of the Geneva Conventions and Protocol I.

74. The information that the Commission received subsequent to the submission of its five-volume Final Report has confirmed that the Commission was correct in making the findings that it did.

GROSS VIOLATIONS OF HUMAN RIGHTS COMMITTED BY SELF-DEFENCE UNITS

75. In its Final Report, the Commission made the following finding against the ANC in respect of the commission of gross human rights violations perpetrated by self-defence units (SDUs):

Whilst the Commission accepts that the violent conflict which consumed the country in the post-1990 period was neither initiated by nor in the interests of the ANC, the ANC must nonetheless account for the many hundreds of people killed or injured by its members in the conflict. While the ANC leadership has argued that its members were acting in self-defence, it is the Commission's view that at times the conflict assumed local dynamics in which proactive revenge attacks were carried out by both sides. High levels of political intolerance among all parties, including the ANC, further, exacerbated this situation; the Commission contends that the leadership should have been aware of the consequences of training and arming members of SDUs' in a volatile situation in which they had little control over the actions of such members. The Commission therefore found that in the period 1990 to 1994, the ANC was responsible for:

- *Killings, assaults and attacks on political opponents including members of the IFP, PAC, Azapo and the SAP*
- *Contributing to a spiral of violence in the country through the creation and arming of self-defence units (SDUs).*

While acknowledging that it was not the policy of the ANC to attack and kill political opponents, the Commission finds that in the absence of adequate command structures and in the context of widespread state-sponsored or directed violence and a climate of political intolerance, SDU members often 'took the law in their own hands' and committed gross violations of human rights.

The Commission takes note that the political leadership of the African National Congress and the command structure of Umkhonto WeSizwe accepted political and moral responsibility for all the actions of its members in the period

1990–1994 and therefore finds that the leadership of the ANC and MK must take responsibility and be accountable for all gross violations of human rights perpetrated by its membership and cadres during the mandate period.

76. The finding was based on evidence that the Commission received from victims who testified or made statements to the Commission, evidence at hearings and submissions handed to the Commission.

Response of the ANC

77. In its response to the Section 30 finding, the ANC argued that the finding:

has the deliberate intention, contrary to the truth readily available to the TRC, of shifting the blame for the political violence which occurred in the period since 1990 away for the apartheid regime to the democratic movement and condemning the oppressed for the efforts they took to defend themselves against a very intense campaign of repression and terror.

78. The ANC also restated what it had said in its submission to the Commission in May 1997:

The post-1990 violence was the work of the state, was organised at the highest level, and was aimed at strengthening the hand of the government at the negotiations table by forcing a progressively weakened ANC into a reactive position in which it would be held hostage to the violence and forced to make constitutional concession.... the ANC was not engaging in 'ongoing conflict', nor were the majority of the people on the ground embroiled in 'ongoing conflict': they were being attacked by covert units operating in accordance with the wishes of the apartheid regime.

Amnesty process

79. The Commission received a number of applications from members of ANC-aligned SDUs for violations committed during the 1990s. However, this was the result of a concerted effort made by a few individuals. Regrettably, a large number of SDUs were not reached in time and many did not have access to legal assistance. In certain instances, they did not qualify because of ongoing violence, which culminated in further incidents of violence linked but occurring beyond the mandate period. In this regard, the Commission visited a number of young people in prison.

Environment in the townships during the period in question

80. In the period following the unbanning of the ANC, the townships were in turmoil. The stakes were high for both the state and its surrogate, the IFP, both of whom were opposed to the ANC taking power. Township residents were constantly under attack by surrogate forces of the state, which included members of the IFP, renegade forces and members of the rightwing who were, in many instances, armed by the state.
81. The violence affected particularly Gauteng and KwaZulu/Natal. It was against this backdrop of state-sponsored violence that the activities of the SDUs took place.

Findings in respect of SDUs

82. In assessing whether the findings that were made in respect of the SDUs remain relevant in the light of the evidence emerging from the amnesty process, the Commission needed to confirm the following:
- a Was the ANC responsible for the creation and arming of the self-defence units?
 - b Was the Commission's finding that there was not an adequate command structure correct?
 - c Whilst acknowledging the state's role in sponsoring the violence, did SDUs take the law into their own hands and perpetrate gross human rights violations?
 - d Did all of this contribute to the violence of the 1990s?

The ANC's role in the creation of self-defence units

83. The SDU's were created amidst the spiralling violence of the negotiation period. The former state engaged in a strategy of negotiating with the liberation movements on the one hand and fomenting violence on the other. This meant that supporters of the ANC were left vulnerable to attack by dark surrogate forces, which later became known as the 'Third Force'.⁶⁶ After a mass funeral in Soweto in 1990, ANC President Nelson Mandela publicly pledged the ANC's commitment to the formation and training of SDUs. In addition, at its consultative conference in Durban 1990, the ANC resolved to take steps to defend itself with all the means at its disposal and to create people's self-defence units as a matter of urgency as it came under increasing pressure at local level to intervene and respond to the violence.

⁶⁶ See Appendix to Section Four in this volume.

84. In its attempts to manage and control the process, the ANC released a document called 'For the sake of our lives', which attempted to prescribe and regulate the structures and activities of the SDUs. The thrust of this policy document was that SDUs should operate in terms of a political rather than a military strategy and that the long-term goal should be peace. It was envisaged that SDUs would be well trained and highly disciplined.
85. The document envisaged that, although MK members would play a role in the establishment of SDUs, it was imperative that they be controlled from within communities because of the past history of informally established units. It was also envisaged that the units would receive political instruction of some sort. Local MK members were granted permission to participate in these structures. MK involvement took the form of recruiting and training of SDU members and supplying weapons. In some instances, individual members of MK participated in the clashes and skirmishes that took place.
86. ANC policy required that selected units supplied certain SDU units with weapons. A special unit was set up within the ANC to assist with the arming of SDUs. These included Ronnie Kasrils, Aboobaker Ismail, Riaz Saloojee, Muff Anderson and Robert McBride. All of these applied for amnesty for supplying weapons and assisting SDUs. In the KwaZulu/Natal area, Jeff Radebe, Ian Munro Phillips and Siphso Joel Daniel Sithole were involved in the supply of weapons and assistance to the SDUs.
87. It is important to note that the ANC was not the only supplier of weapons. In most instances, the SDU units had other sources of supply.
88. There is no doubt that the ANC played a major role in establishing SDUs in both the Transvaal and KwaZulu/Natal areas.

Command structures

89. In KwaZulu and Natal, SDUs consisted in the main of loose formations comprising youth and community members in a particular community. There was no formal command structure. However, while ANC branch leadership often assumed the command of these structures, ANC structures themselves were often not well established or formalised and consisted of a handful of supporters who came together for particular events or occasions. Thus ordinary residents living in ANC-aligned areas might find themselves having to participate in an

attack simply because they lived in an area. In many instances, there was no specific commander and the group that came together acted in concert either to defend themselves or to launch an attack.

90. What emerged from the amnesty process was that geographical location played a crucial role. Living in a particular area compelled you to take sides in the conflict. In addition, clan or group loyalty often dictated from whom people received their orders. This meant that ostensible political conflicts were fused with other motives, land disputes and issues of an economic nature. Revenge and reprisal featured strongly in the ongoing conflict.
91. These issues must, however, be viewed against the larger political conflict and violence being sponsored by the former state.
92. In Gauteng, the Tokoza units stayed in close contact with the ANC, and the local branch played a monitoring and disciplinary role. Despite this, these units were also responsible for acts of great violence. In many other townships in Gauteng, links depended largely on whether strong ANC branches existed at a local level. In a number of instances, MK members also played a role in establishing and training SDU members. Vosloorus is an example of this. In most instances, SDUs were established through community structures, often in response to attacks from the IFP.

Role of leadership

93. In their evidence, amnesty applicants in Gauteng stated that, whilst they consulted with leadership on policy and guidelines, they did not inform them of their plans and did not advise them about the nature of their operations. Decision-making took place at community level.
94. Whilst many prominent ANC leaders played a major role in supporting local SDUs, in KwaZulu and Natal they also played a crucial role in peace-building efforts.
95. Evidence emerging from amnesty applications confirms that many SDU members on the ground were cognisant of the fact that the ANC at national level was pursuing a strategy of peace through negotiations. However, at a regional level, the violent conflict between the warring sides reduced the impact of the national strategy. Survival required that you be ready to defend yourself. Testimony from the amnesty hearings reveals that, at a community level, many felt that leadership was not in touch with what was happening on the ground.

96. Another factor that played a major role in the conflict was the fact that ANC-aligned communities could expect little or almost no support from the police or any other state structure. Communities were left to defend themselves against attacks, which often resulted in their taking the law into their own hands.
97. Thus leadership of the SDUs was effectively in the hands of local ANC branches. While ANC policy did not allow for killing other than of a defensive nature, communities in these compelling circumstances tended to take their own decisions. Generally speaking, the ANC national and regional leadership was not involved in these decisions and, indeed, engaged in peace-building efforts in an attempt to restore peace.
98. Furthermore, in the vast majority of instances, no report was made to the national leadership after an attack. In many instances, operatives felt that, because no order or authorisation had been given, there was no necessity to report. The Commission's original finding that there was no adequate command structure is correct and is clearly borne out by the evidence that emerged from the amnesty process. In fact, command was *ad hoc* and dependent on the circumstances of the day in a particular area.

Were the SDUs responsible for the commission of gross human rights violations?

99. The picture that emerges from the amnesty process is that communities found themselves in conflict with the IFP and the state. As they could not rely on protection from the organs of the state, they felt compelled to take the law into their own hands to protect themselves. Evidence reveals that issues of a personal nature – such as loyalty to a particular chief or clan – often became intertwined in the particular conflict. The support that the former state lent to the IFP meant that ANC-aligned communities were at a great disadvantage. They became very vulnerable and an easy target for 'Third Force' activity. Within this context, gross human rights violations were perpetrated.

Nature of violations committed by SDUs

100. The Commission's founding Act determined that killings, abductions, torture, severe ill-treatment and attempts, plots and conspiracies to commit the above constituted gross human rights violations. Amnesty applicants have testified in

their amnesty applications to killings; arson attacks on homes of members of the IFP, police officers and those perceived to be collaborators, and attacks on hostels. In a number of instances, houses were occupied at the time of the attacks. Abduction of suspects was a particular *modus operandi* of the East Rand SDUs. This was followed by interrogation of suspects, and later by summary execution. In this sense, SDUs acted no differently from agencies of the state in using torture as a mechanism to extract confessions from alleged suspects that they were 'IFP members'. In most instances, these confessions were believed and often resulted in the 'suspect' being killed. However, one has to question the validity of an admission made under duress.

101. SDU members were responsible for the targeted killing of those they suspected of being informants, collaborators and members of the IFP. In many instances, identification was made on spurious grounds. Many young members of SDU units were involved in reconnaissance work, the cleaning of weapons and lesser offences such as the collection of money from residents for weapons.
102. In KwaZulu and Natal, members of SDUs targeted many IFP members for assassination. An example of this is the killing of a prominent IFP leader, Mr Mkhize, in Umkomaas in November 1990. Those ANC members suspected of being informers or of having defected to the IFP or the state were also targeted for assassination. Fatal mistakes were made by SDU members, which resulted in the deaths of many who were innocent. In one such incident, a bus containing school children was ambushed in the belief that it was carrying members of the IFP. In this tragic incident, six children were killed and many others were injured. The reason the amnesty applicants advanced for the attack was that the IFP was forcing them to leave the area and that they were being displaced from their homes.
103. Internecine war also took place within the ranks of the SDUs. A number of SDU members were killed in internal clashes. Internal fighting among the ranks of different units as well as with members of the ANC Youth League was a major problem. In Tokoza, an 'eye for an eye' policy was adopted. If an SDU member took the life of a member, his life would be forfeit. A number of amnesty applicants testified about this. The evidence is often chilling, as applicants describe the brutal circumstances under which most of these youth lived. It was often kill or be killed.

104. In one incident involving members of a SDU and members of the ANC Youth League, nine ANC members were killed. Several of the victims were under 17 years of age. In this incident, the victims were first shot and later hacked and stabbed to death.
105. Cognisant of this rising problem, a unit was established in the Cape to deal with the tensions between members of different SDUs. They too became involved in the violence that was taking place.
106. In KwaZulu and Natal, internal disputes between ANC and SACP members led to bitter conflict, so that Mr Harry Gwala was forced to intervene in the matter and broker a peace deal. Mr Blade Nzimande also approached the parties to settle the dispute. Most peace efforts failed and a number of people on both sides of the conflict were killed.
107. A small number of SDUs were involved in armed robberies. Robberies were certainly not considered to be ANC policy, but they took place nevertheless. In one incident in KZN, a number of people were killed and others injured. There is also no doubt that many of the incidents involved the personal agendas of individuals rather than the movement. One such incident involved an attack on the Lembede family at their shop, ostensibly on the grounds that they were IFP members. This family is related to the late Anton Lembede, a former ANC President.
108. Similarly a number of SDUs in Gauteng were involved in armed robberies, ostensibly to obtain funds to purchase weapons.

Conclusion and validity of findings

109. It is clear from the evidence that emerged in the amnesty hearings that the conflict took on a life of its own. Once SDUs were established, attempts by ANC leadership to establish control failed dismally. Youth with little or no proper training made decisions spontaneously, based on the need to deal with unfolding events. Often the attacks that took place were in the nature of reprisal strikes; but many were simply based on revenge or the need to get even. Target selection was often capricious and usually followed by killing. Again, the mere labelling of an opponent as the 'IFP' or an 'informer' legitimated the killing of that particular person. The immature way in which people were identified as belonging to

another group had tragic consequences. Clothes in some instances would be used as an identifying mark, or the speaking of Xhosa instead of Sesotho.

110. The evidence that emerged from the amnesty process confirms the correctness of the original findings that the Commission made in respect of SDUs. The evidence has also revealed much more of the political context within which the conflict took place. The picture that emerges is of structures let loose once they had been established. Had ANC leadership been more pro-active in the control and management of these units, there is no doubt that many of incidents would not have taken place and fewer lives would have been lost. Although the ANC did not train all of the units and was not the major supplier of arms, it was politically responsible for the establishment of these units and should have played a greater role in managing them. This failure led directly to the commission of gross human rights violations by many SDUs. In the circumstances, the findings of the Commission are still valid. [\(...p670\)](#)