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**Findings and
Recommendations**

**HOLDING THE PAN
AFRICANIST CONGRESS
ACCOUNTABLE**

Holding the Pan Africanist Congress Accountable

■ FINDINGS

1. In its Final Report, the Truth and Reconciliation Commission (the Commission) made findings of accountability against the Pan Africanist Congress (PAC) in respect of the commission of gross human rights violations.
2. The Commission stated in its report that it recognised the PAC as a legitimate liberation movement which had waged a just struggle against the apartheid government. However, in the course and conduct of that struggle, it had committed gross violations of human rights.
3. While the PAC did not formally commit itself to upholding the provisions of the Geneva Conventions or the Additional Protocols, it was nevertheless bound by international customary law and, in particular, by international humanitarian law.
4. The Commission made three major findings against the PAC. It made a finding against the PAC's armed grouping of the 1960s, Poqo; a finding against the PAC for violations committed in exile, and a finding against its armed wing APLA in the later period.

FINDING ON POQO

5. The Commission stated in its Final Report that:

*While the Commission takes note of the explanation tendered by the PAC that its activities in the early 1990's need to be understood in the context of the 'land wars of the time', it nevertheless finds that the PAC and **Poqo** were responsible for the commission of gross violations of human rights through **Poqo's** campaign to liberate the country. This unleashed a reign of terror, particularly in the Western Cape Townships. In the course of this campaign, the following groups suffered gross violations of their human rights:*

- Members of the police, particularly those living in Black townships;
- The so-called 'Kataganese', dissident members of the PAC who opposed

the campaign and were subjected to physical attacks and assassinations by other Poqo members;

- Representatives of traditional authority in the homelands, that is Chiefs and headmen;
- White civilians in non-combat situations.⁶⁹

6. In making these findings, the Commission relied on evidence received from victims and witnesses who made statements and submissions to the Human Rights Violations Committee. In terms of the evidence received, the commission of human rights violations by PAC members began with the activities of its 1960s armed grouping, Poqo. These included forcible conscription drives and attacks on the South African Police, white civilians, and alleged 'collaborators' and 'dissidents' within the movement.
7. Poqo's activities in the early 1960s unleashed a reign of terror, particularly in the Western Cape townships, where it adopted aggressive conscription methods. These allowed no room for dissent and at times resulted in violent intolerance towards members and outsiders who criticised or failed to support its methods.
8. The Commission found that Poqo militants targeted civilians indiscriminately, particularly in the November 1962 Paarl attacks, which resulted in the killing of two white civilians. It found that these attacks (on the prison, the police station and the private homes of white residents) were locally planned and executed in response to serious local grievances arising from the strong enforcement of influx control and the corruption of Bantu Administration Board officers. Although not officially sanctioned by the regional or national PAC leadership, the Paarl attacks fell in line with a mass uprising planned for 8 March 1963, which specifically targeted whites and government agents.
9. The February 1963 attack on a group of whites sleeping at the roadside near Bashee (Mbashe) River Bridge in Transkei, in which five whites were killed, was also found to be an indiscriminate targeting of civilians. A massive police crack-down on the PAC followed. Fifty-five people were subsequently charged with murder, of whom twenty-three were convicted and sentenced to death.
10. The PAC told the Commission that the incident needed to be understood in the context of the land wars of the time. Families were being forcibly moved from

⁶⁹ Volume Five, p. 244.

their plots and homes without compensation to make way for the construction of a new road between Umtata and Queenstown. In the light of this, the PAC considered their attack to be purely defensive.

11. The Commission took note of the explanation but nonetheless found the PAC and Poqo to have been responsible for the commission of gross violations of human rights in its indiscriminate targeting of civilians.
12. In 1962 and 1963, Poqo members engaged in attacks on representatives of traditional authorities in the homelands, killing two headmen in the St Marks district of Cofimvaba in the Transkei. The attacks were described by the PAC as 'aimed at those headmen and chiefs assisting the dispossession of African people through the rural rehabilitation scheme'. On 12 December 1962, armed Poqo members were intercepted by police while on their way to assassinate Chief Kaiser Matanzima. An armed clash took place at Ntlonze Hill in the Transkei. Seven Poqo members were killed in this encounter and three policemen were seriously injured. The Commission considered this incident to be in the nature of a military encounter in which both sides were armed. It concluded, therefore, that the injuries to the policemen and the deaths of the Poqo members did not constitute gross human rights violations.
13. In the early 1960s, a group of disaffected PAC supporters, dubbed the 'Katangese', began operating outside the PAC's policy framework. They soon became the targets of physical attacks, attempted assassinations and attacks by Poqo gangs.
14. The PAC considered police officers to be an extension of the apartheid machinery and hence legitimate military targets. Spies and informers fell into this category as well. Dissidents in the movement were treated as the 'enemy'. It needs to be remembered that there were continual fears that the liberation movement would be infiltrated by those in the employ of the state. Not unnaturally, vigilance tended to spill over into paranoia.
15. The PAC deliberately targeted 'white farmers' as they were considered to be 'settlers' and thus 'acceptable' targets for killing.
16. The activities of Poqo belong to the 1960s and it is not surprising that the Commission received no amnesty applications from members of Poqo for violations committed during this period. Nor did the PAC furnish the Commission

with any further information related to these matters, providing no reason for the Commission to change its findings in respect of Poqo.

17. The finding with respect to Poqo thus remains unchanged.

FINDING ON PAC 'INTERNAL' VIOLATIONS

18. Like the African National Congress (ANC), the PAC executed a number of persons in custody in their camps without due process. This was usually on the instructions of its high command. In terms of the Protocols, such killings are considered to be grave breaches of the conventions.

19. In its Final Report, the Commission made the following finding:

The Commission finds that a number of members of the PAC were extra-judicially killed in exile, particularly in camps in Tanzania, by APLA cadres acting on the instructions of its high command, and that members inside the country branded as informers or agents, and those who opposed PAC policies were also killed. All such actions constituted instances of gross violations of human rights for which the PAC and APLA are held to be responsible and accountable.⁷⁰

20. In assessing this finding, it is important to note that the violations that occurred in the ranks of the PAC in exile were largely the result of divisions within the PAC leadership, military command structures and APLA members. Evidence received by the Commission revealed that many such violations took place. Whilst the Commission received a number of statements from victims regarding their treatment in exile, it received only one amnesty application in connection with these violations. Unlike the ANC leadership, the PAC leadership made no submissions on this issue to the Commission.
21. The Commission also received statements from families of individuals who went 'missing in exile', and heard evidence of the killing and attempted killing of PAC cadres in exile for which the PAC was allegedly responsible. It also received evidence in respect of a number of cases of assault and torture in PAC camps in Tanzania. Assault and torture were used as mechanisms to deal with suspected dissidents or infiltrators. The PAC did not have a security division responsible for handling such matters. Nevertheless, sections 1.4 and 1.5 of its Disciplinary Code provided constitutional justification for the use of 'firm iron discipline' and

⁷⁰ Volume Five, 'Findings'.

for 'chopping off without ceremony' factional elements in the movement, 'no matter how important'.

22. The Commission found the PAC responsible for the extrajudicial killing and attempted killing of a number of PAC members in exile, particularly in the camps in Tanzania.
23. In reviewing these findings, the Commission records that it received no further information affecting the substance of this finding subsequent to the publication of its Final Report. Moreover, it reiterates that the Geneva Protocols applied to the PAC, even though the latter may not have considered itself bound by its provisions. The Convention on Torture makes it clear that torture is not permitted in any circumstances. Hence, cases of torture clearly constitute contraventions and gross human rights violations. Moreover, the execution of persons in custody without due process is considered to be a grave breach of the Protocols.
24. There is thus no reason, compelling or otherwise, for the Commission to change its findings in respect of these incidents.

VIOLATIONS AGAINST PAC MEMBERS AT HOME

25. The PAC was also responsible for violations against its own members inside South Africa after 1990, for which five applications for amnesty were received. In the main, they involved the killings of suspected informers. The Commission found the PAC responsible for the killing and attempted killing of members branded as informers and agents, as well as of those who opposed PAC policies.
26. The Amnesty Committee received four amnesty applications for the killing of three individuals suspected of collaborating with the security police. In one instance, a fellow PAC and APLA member was seen in the company of a police officer and was allegedly overheard talking to him and promising to report on a PAC meeting. He was killed. The amnesty committee accepted the amnesty applicant's explanation.⁷¹
27. In another application, an amnesty applicant took a decision to kill a comrade whom he regarded as an informer. Although he failed to do so, he himself was injured and captured in the course of his last attempt. He applied for amnesty for

⁷¹ See Section Three, Chapter Four of this volume.

the attempted killing. The Amnesty Committee accepted his version and his proposition that the attempted killing of this police informer was politically justified.⁷²

FINDINGS ON GROSS HUMAN RIGHTS VIOLATIONS COMMITTED BY PAC/ APLA DURING ITS ARMED STRUGGLE

28. The Commission's major finding on the Azanian People's Liberation Army (APLA) was in respect of the commission of gross violations of human rights committed in the course of the armed struggle inside the country during the 1980s and 1990s.

29. The Commission stated that:

[w]hile the PAC proclaimed a military strategy of a protracted people's war, which involved the infiltration of guerrillas into the country to conduct rural guerrilla warfare and attacks in the township, in actuality, the primary target of its operations were civilians. This was especially so after 1990 when, in terms of its 'Year of the Great Storm' campaign, the PAC/Apla targeted whites at random and white farmers in particular.

30. The Commission noted but rejected the PAC's explanation that the killing of white farmers constituted acts of war. To the contrary, the Commission found PAC actions against civilians and whites to have constituted gross violations of human rights for which the PAC and APLA leadership was held morally and politically responsible and accountable.

31. The Commission found that:

[t]he targeting of civilians for killing not only constitutes a gross violations of human rights of those affected but a violation of international humanitarian law. The Commission notes but rejects the PAC's explanation that its killing white farmers constituted acts of war for which it has no regrets and apologies. To the contrary, the Commission finds PAC action directed towards both civilians and whites to have been a gross violation of human rights for which the PAC and Apla leadership are held to be morally and politically responsible and accountable.

32. In dealing with this issue, an important factor to bear in mind is the PAC's political platform, captured in a statement made by Brigadier Mofokeng at the armed forces hearing:

The enemy of the liberation movement of South Africa and of its people was

⁷² Ibid.

always the settler colonial regime of South Africa. Reduced to its simplest form, the apartheid regime meant white domination, not leadership, but control and supremacy. The pillars of apartheid protecting white South Africa from the black danger, were the military and the process of arming of the entire white South African society. This militarization, therefore, of necessity made every white citizen a member of the security establishment.

33. The vast majority of amnesty applications fall into this category and will be considered in greater detail below.

SUBMISSION MADE BY THE PAC IN RESPONSE TO THE FINDINGS MADE BY THE COMMISSION

34. In terms of section 30 of its founding Act, the Commission sent the PAC a notice setting out its proposed findings on 27 August 1998. The PAC responded on 21 October 1998 through its secretary-general, Mr Ngila Muendane. The response reached the Commission's offices after the cut-off date and was not considered or taken into account at the time of the publication of the Commission's Final Report. In reviewing its findings, however, the Commission returned to the submission made by the PAC.
35. The first objection that the PAC raises in the submission is that the Commission labelled it a gross violator of human rights. The PAC argues that, if the Commission determined that its struggle was just, it was contradictory to find it a violator of gross human rights. The PAC made this point again after the Commission had handed over its Final Report to President Mandela in October 1998.
36. The second issue raised by the PAC was that of 'legal equivalence'. This echoed objections raised by the ANC that violations committed by members of the liberation movements were given legal equivalence to those perpetrated by members of the security forces.
37. Beyond this, the PAC did not respond in any detail to the Commission's findings; nor did it make reference to the problems and reservations it had raised with the Commission while the process was underway. Instead, it affirmed the work of the Commission, despite some general reservations on the Commission's findings on the liberation movements in general.

PAC COMMENTS DURING PARLIAMENTARY DEBATE

38. In the parliamentary debate on the Commission's Report, held on 25 February 1999, PAC President Dr Stanley Mogoba noted that the Commission had revealed the painful truth of past apartheid atrocities but had not succeeded in bringing about reconciliation:

The TRC unavoidably opened the wounds of many families who were hurting in silence. The skeletons of this country came tumbling out of the cupboards. Some of us who had experienced the terrible side of the apartheid repression knew some of the truth, but only a fraction of the truth.

39. However, while Dr Mogoba praised the Commission for 'the positive contribution' it had made in 'the manner in which it revealed the painful truth of past atrocities and shocking barbarity during apartheid', he criticised it for condemning the liberation movements for atrocities perpetrated during the liberation struggle:

Although the context of hostilities, war and the struggle for survival is grudgingly admitted, the condemnation is nevertheless made. How we may ask, can people who were fighting and killing to uphold an oppressive and inhuman apartheid system, which was roundly condemned as a crime against humanity, be placed on the same scales of justice with the victims of that system?⁷³

40. This, indeed, was the criticism levelled at the Commission by all the liberation movements, despite the fact that they themselves had played a leading role in drafting the legislation that required the Commission to adopt an 'even handed' approach to the commission of gross human rights violations. The legislation did not make a distinction between the state and any other party. It required the Commission to investigate *all* gross human rights violations. Moreover, in making its findings, the Commission found the former apartheid state to be the major perpetrator responsible for state-sponsored violence.
41. The Commission considered that the war waged by the liberation movements was a just war and upheld the finding of the United Nations that apartheid was a crime against humanity. Thus the fight against the apartheid government was considered to be just and legitimate. Reference should be made to Additional Protocol I to the Geneva Conventions of 1949 covering armed conflicts in which

⁷³ *The Sowetan*, 30 October 1998.

⁷⁴ Provisions relating to Geneva Convention of 1949 relating to the protection of victims in armed conflicts, (Protocol I) 1125 53 U.N.T.S.

people are fighting against racist or colonial regimes,⁷⁴ which was specially created to deal with the struggles being conducted in South Africa and Israel. The conflict was therefore regarded as an international armed conflict.⁷⁵

42. The PAC sought disingenuously to blur the lines between a 'just cause' and 'just means', striving to make the point that, if the struggle it waged was just, it could not possibly be a violator. Their point of departure was that, if the cause is just, it follows that the actions performed in support of that cause must also be just. In terms of the Geneva Convention and the Protocols, the means used also have to be just.
43. Taken one step further, the PAC insisted on the view that anybody they considered to be the enemy in terms of their own policy constituted a 'legitimate' target. This view is contrary to the provisions of international humanitarian law, which considers the only acceptable or legitimate target to be a 'combatant'. In addition, civilian casualties are perceived to be grave breaches of the Geneva Conventions and the party responsible for the killing is considered to have committed a gross violation of human rights.
44. The PAC also makes the point that the majority of people who die in war are innocent and that that is the very nature of war. This assertion, of course, evades the fundamental purpose of international humanitarian law which is to ensure that innocent people such as civilians are not killed, maimed and tortured and that they, particularly, are protected from the impact and ravages of war.

Application of the Geneva Conventions

45. The Geneva Conventions and the Additional Protocols set out comprehensively the situations in which grave breaches are said to be committed.⁷⁶ The Geneva Conventions stipulate that, even if one of the parties in a conflict is not a party to the Conventions, the other party will remain bound. Article 1(2) of Protocol I specifically states that, in cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from dictates of public conscience. Reference was made in the chapter dealing with the ANC⁷⁷ to the fact that this Protocol was intended to deal with those situations where 'peoples are fighting

⁷⁵ See this section, Chapter Three, 'Holding the ANC Accountable'.

⁷⁶ See Appendix 2 to Chapter One of this section.

⁷⁷ Chapter Three of this section

against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination as enshrined in the Charter of the United Nations and the Declaration of Principles of International law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations'. These Conventions are designed to limit the brutality of war and the loss of civilian life and, in particular, to hold accountable those who wage war in an unacceptable fashion.

46. Common Article 3 defines what kinds of acts constitute violations. There are a total of four acts that, if committed in respect of 'persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause' constitute grave breaches. They include the following:
- a violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
 - b taking of hostages;
 - c outrages upon personal dignity, in particular humiliating and degrading treatment, and
 - d the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognised as indispensable by civilised peoples.
47. Given the provision of Common Article 3, it can be seen that this argument of the PAC is disingenuous and cannot be taken seriously. Whilst it is true that innocent people lose their lives, it is by no means acceptable that they should do so.

FINDINGS

Police officers as 'legitimate' targets

48. The PAC makes the assertion that they considered all police officers to be legitimate targets because they were the agents of apartheid and thus criminals. Their involvement with the apartheid government made them a legitimate target of the liberation movement.
49. An anomalous factor is that the vast majority of attacks against police officers took place at times when they were technically off duty. In most of these

instances, their houses were attacked and often their families were included in the attack.

50. In this regard, the PAC makes the point that one cannot draw a distinction between the period when police officers are at work and the period when they are off duty. It asserts further that, even when they were off duty, they were reporting to the state.
51. The main thrust of the PAC's argument is that police officers were considered by the vast majority of township residents to be agents of the state, and that in the eyes of the liberation movements they were regarded as collaborators and therefore constituted legitimate targets. The question of being on or off duty or in plain clothes or uniform was not at issue.
52. There is no doubt that police officers were perceived by ordinary people to be an extension of the state and thus legitimate targets of the liberation movements. In most of the townships, police were perceived to be the enemy and in many instances played the role of maintaining the apartheid government's power. This is not true of all police officers, but it is certainly true of the vast majority who became police officers during the apartheid era. One of the most painful experiences for most members of the community was the fact that police officers were an extension of apartheid authority and were responsible for carrying out many brutal acts against members of the community. In a number of instances, they were responsible for the arrest and detention of loved ones. In a vast number of cases, black policemen were responsible for the torture of activists in the townships.
53. In its submission, the PAC makes the point in vivid language:

When is a criminal not a criminal? Is he a criminal only when he commits a crime and stops being such when he retires to his bedroom at night? Would we say that the police must stop pursuing him simply because his now with his family and enjoying a Sunday meal.
54. It goes on to make the point that the apartheid government did not make that distinction.

55. The PAC points out that, in terms of their own definitions, 'all police were the enemies of oppressed people because under that system they were obliged to work even when they were off duty'.
56. However, even if one accepts the argument that police officers were an extension of the apartheid system and thus legitimate targets, this does not remove from the PAC responsibility for attacks on police officers when they were *hors de combat* or when, unacceptably, innocent family members were killed or injured in these attacks.
57. Furthermore, it is not correct to assume that all police officers collaborated with the former state. In many instances, they joined the force because there was little opportunity for them to do anything else. Are they to be considered any more complicit in the apartheid system than magistrates or other persons who accepted jobs in the apartheid system?
58. If one accepts the argument that police officers were an extension of the apartheid apparatus, does this make a police station a legitimate target? In one case, applicants sought amnesty for an attack on a police vehicle in Diepkloof during which one policeman was killed and another injured.
59. In another incident, amnesty was sought for an attempted attack on the Yeoville police station. In this particular incident, the applicants were intercepted before they got to the police station. However, one SAP member was injured in the crossfire that ensued.
60. A question that must be considered is: Are all policemen who served in the apartheid force to be considered combatants and thus legitimate targets?
61. If one accepts the PAC's argument with regard to police officers, then neither the PAC nor ANC can be held responsible for the commission of gross human rights violations for these attacks. However, if one applies a strict interpretation of the Conventions, they would nevertheless be held accountable.

Traditional leaders as ‘legitimate’ targets

62. The PAC treated traditional leaders who co-operated with the state as an extension of the apartheid system and thus as legitimate targets.
63. In 1962, members of Poqo attacked representatives of traditional authority in the homelands, killing two headmen in the St Marks district of Cofimvaba, Transkei. These attacks were described by the PAC as being ‘aimed at those headmen and chiefs assisting the dispossession of African people through the rural dispossession scheme’.
64. On 12 December 1962, armed Poqo members were intercepted by police while on their way to assassinate Chief Kaiser Matanzima. An armed clash took place. In this encounter, seven Poqo members were killed and three policemen seriously injured. In its original report, the Commission considered this to be a combat situation.
65. The question these incidents raise is whether those who became part of the apartheid system became legitimate targets as identified by the PAC. The above situation relates to but one example of the iniquity of the apartheid system, which dispossessed people of their land, often violently, and frequently replaced hereditary leadership with chiefs of their own. Yet the targeting of traditional leaders and chiefs cannot be condoned and must constitute a gross human violation. Thus the motivation for the attacks can be understood but not condoned.

Civilians and farmers as ‘legitimate’ targets

66. In its second submission to the Commission, the PAC confirmed its earlier stance that whites under apartheid were beneficiaries of the system, that every white person was part of the defence lines of apartheid, and that the Commission had to accept that every white home during the apartheid era was some kind of garrison.
67. While the Commission did not deal conclusively with the notion of ‘beneficiaries’, there is no doubt that white people were the beneficiaries of apartheid and its largesse. White people cannot escape the fact that being white in South Africa enabled them to benefit from the system at the expense of the black majority. Having said that, the Commission cannot accept the argument that every white person must be considered part of the apartheid defence system

and that every white home must be considered to be a garrison. This is absurd and must be rejected. There were a large number of white people who not only opposed apartheid but who also fought against it in a variety of different ways, including the taking up of arms.

68. An analysis of the amnesty applications received from the PAC reveals that a total of thirty-two applications were received for attacks on civilians. In these incidents, twenty-four people were killed and 122 seriously injured.
69. These attacks formed part of the PAC's 'Operation Great Storm'.
70. A number of applicants claimed that the attacks were not motivated by racism. Rather, as whites were seen to be complicit in the government's policy of apartheid, they constituted a legitimate target.
71. Mr Letlapa Mphahlele, APLA director of operations, stated at a media briefing in Bloemfontein on 28 October 1997 that APLA offered no regret or apology for the lives lost during 'Operation Great Storm' in 1993. He said that his 'proudest moment was seeing whites dying in the killing fields'. He also accused the Amnesty Committee of being 'a farce and a sham' which sought to 'perpetuate white supremacy'.
72. Despite such spurious attacks on the Amnesty Committee, there is no doubt that the Committee considered the arguments of applicants very seriously – with the result that APLA members received amnesty for the most heinous of crimes on the basis that they complied with the requirements of the amnesty process. The Amnesty Committee has itself sustained serious criticism for some of these decisions, which many felt represented too generous an interpretation of 'proportionality'.

Attacks on civilians

73. Attacks on civilians included those made on the King William's Town Golf Club; Steaks restaurant in Claremont, Cape Town; Yellowwoods Hotel, Fort Beaufort; St James Church in Kenilworth, Cape Town; the Heidelberg Tavern in Observatory, Cape Town, and Amy Biehl in Guguletu, Cape Town.⁷⁸

⁷⁸ Amnesty applications for targeting white civilians are detailed in this volume, Section Three, Chapter Four.

74. A common feature of these attacks is the fact that they involved indiscriminate attacks on civilians. Whilst applicants have stated in their amnesty applications that the intended targets were military or security force personnel, no proper investigation was carried out to determine whether their perceptions were correct. In fact, in most of the incidents, their information or intelligence was incorrect and suspect.
75. In terms of the Geneva Conventions, civilians are protected by principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience. There can be no justification for the choice of civilians as targets.
76. The amnesty decisions have supported the stance the Commission took with regard to attacks on civilians. No compelling evidence has been provided to the Commission to persuade it to change its findings in respect of the attacks on civilians. Indeed, the evidence that emerged from amnesty hearings supports the original findings. While the motive for the attacks are understood and, in most instances, the Commission can understand the rage that motivated them, motive cannot change the fact that the victims in most cases were innocent civilians who were unarmed.
77. The findings that the Commission made in respect of the PAC and APLA in regard to attacks on civilians must stand.

Farmers as 'legitimate' targets

78. The Commission made findings against the PAC and APLA for their indiscriminate attacks on farmers. The second submission made by the PAC is curious in this respect, suggesting that, in making this finding, the Commission is biased in favour of white people. The rest of the PAC's argument is fairly spurious.
79. The Commission received a total of twenty-seven applications from the PAC and APLA for attacks on farms, committed between the period 1990 and 1993. In these attacks, twelve people were killed and thirteen injured. The majority of these applications were granted.
80. APLA and PAC operatives testified that it was part of their strategy and policy in terms of 'Operation Great Storm' that farmers would be attacked in order to drive white farmers from their farms in order to get their land back.

81. These operations involved the deliberate targeting of white farmers and are quite unlike the ANC's landmine operations in farming areas. Whilst it is true that farmers in many of the border areas were trained and issued with weapons so that they could take part in commandos patrolling the area, not all of the farmers so targeted were an extension of the apartheid system.

Specific amnesty applications dealing with attacks on white farmers

82. One of the incidents for which amnesty was applied involved an attack on Mr RJ Fourie on the farm 'Stormberg'. Mr Fourie was attacked from behind, ambush style, and killed. A witness made a submission to the amnesty committee to the effect that the deceased was not interested in politics and was known to be a progressive farmer in the area. He had assisted his workers to improve their stock, housed them in brick houses with running hot and cold water and built a school for their children on the farm, as well as a soccer club.
83. In another incident, the amnesty application involved the killing of Mr John Bernard Smith, also a farmer. Mr Oliphant, one of the applicants, testified that it was the objective of the PAC to wage the struggle for the return of land to the African people, which was why he had become involved in that operation. Another applicant testified that it was part of PAC policy to intensify the armed struggle in order to strengthen the hands of the PAC in the negotiating process. He described the attacks on the farmers as one of the phases of the campaign. The PAC believed that the farming community had participated in the dispossession of the African people and that they were beneficiaries of the land taken away from the Africans.
84. None of the reasons advanced in any of the amnesty applications can condone the fact that, in most of the attacks, the farmers targeted and killed were ordinary civilians, in no way linked to different commando groups. They cannot therefore be seen as an extension of the security forces. In terms of the Conventions, they do not, therefore, constitute a legitimate target. Nor are they considered combatants.
85. The finding made in respect of findings of accountability for gross human rights violations committed against farmers by the PAC and APLA must therefore stand. They were responsible for the commission of gross human rights violations. In most instances the nature of the attack was almost that of an ambush.

PAC/ANC conflict

86. The Commission received four applications for offences committed in the course of the conflict between the PAC and the ANC. While the applicants received amnesty, the evidence led at the hearings cast doubt on whether they were dealing with each other in a combat situation. The evidence that was led spoke of the ongoing violence in the area, but the targeting of opponents often resulted in innocent people being killed. Nevertheless, the PAC must accept responsibility for these killings, which constitute gross human rights violations.

Applications refused

87. The Committee received a number of amnesty applications from persons in custody, which it refused either on the grounds that the incidents were not politically motivated or on grounds of lack of full disclosure. In most of these incidents, the applicants remain in custody serving sentences.
88. The leaders of the PAC maintain that a number of their cadres are languishing in apartheid jails and that special arrangements should be made to pardon them. At a parliamentary briefing after the debate on the Commission's report, Dr Stanley Mogoba, the President of the PAC, made a call to the State President to pardon 'the many freedom fighters who are still languishing in our prisons'.

Now that the TRC work is finished – or is about to be finished – it is time, perhaps, to call on our President, perhaps as a farewell gift or gesture, to give Presidential pardon to these prisoners from the liberation struggle. Many grieving families would be eternally grateful to our President for that. I also want to say that this argument and this discussion must be separated from the discussion on general amnesty. I am not talking about general amnesty.

DIFFICULTIES EXPERIENCED BY PAC APPLICANTS

89. It is important for the Commission to acknowledge the great difficulty that the PAC/APLA cadres experienced in filing proper amnesty applications. They were hampered by the fact that, at the time, the Legal Aid Board appointed inadequate Counsel to assist them. In many instances, counsel did not bother to read the Commission's founding Act or endeavour to understand it. It was only after legal practitioners such as Mr Bandazaya were appointed that these applicants began to be properly represented.
90. There is no doubt that a number of people still in custody did not apply for amnesty for a variety of reasons, including the fact that they were not properly advised. The government will need to consider this issue from a humanitarian point of view. It is commendable that the President of the PAC does not consider that another amnesty deal should follow.

Pardons

91. Recently the President pardoned a number of PAC amnesty applicants who had been denied amnesty by the Committee. This decision was widely criticised by civil society and victims, as the pardons were perceived to be a ploy to grant amnesty using the 'presidential pardon' process. There has been a demand from civil society that the President explain why he took this decision, as the use of the presidential pardon to grant amnesty is seen as undermining the work of the Commission whose mandate it was to grant amnesty on an accountable basis.

CONCLUSION

92. The evidence that emerged from the hearings of the Amnesty Committee did not lead to any alteration in the findings of the Commission as recorded in the Final Report. [\(...p720\)](#)