



**REFERENCES TO THE WORD
“HUMAN RIGHTS”**

in Truth and Reconciliations Commissions Reports of African Countries:

**Gambia, Ghana, Kenya, Liberia, Mauritius, Morocco,
Nigeria, Rwanda, Sierra Leone, South Africa, Tunisia**

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Note on Word Frequency Query:

Minimum 4 letter words were chosen (rather than 3 letter word length)

4 letter words were preferred so that years (such as 2020, 2021, and so on) can also be found.

Note on software:

The word references analysis was done by NVivo software.

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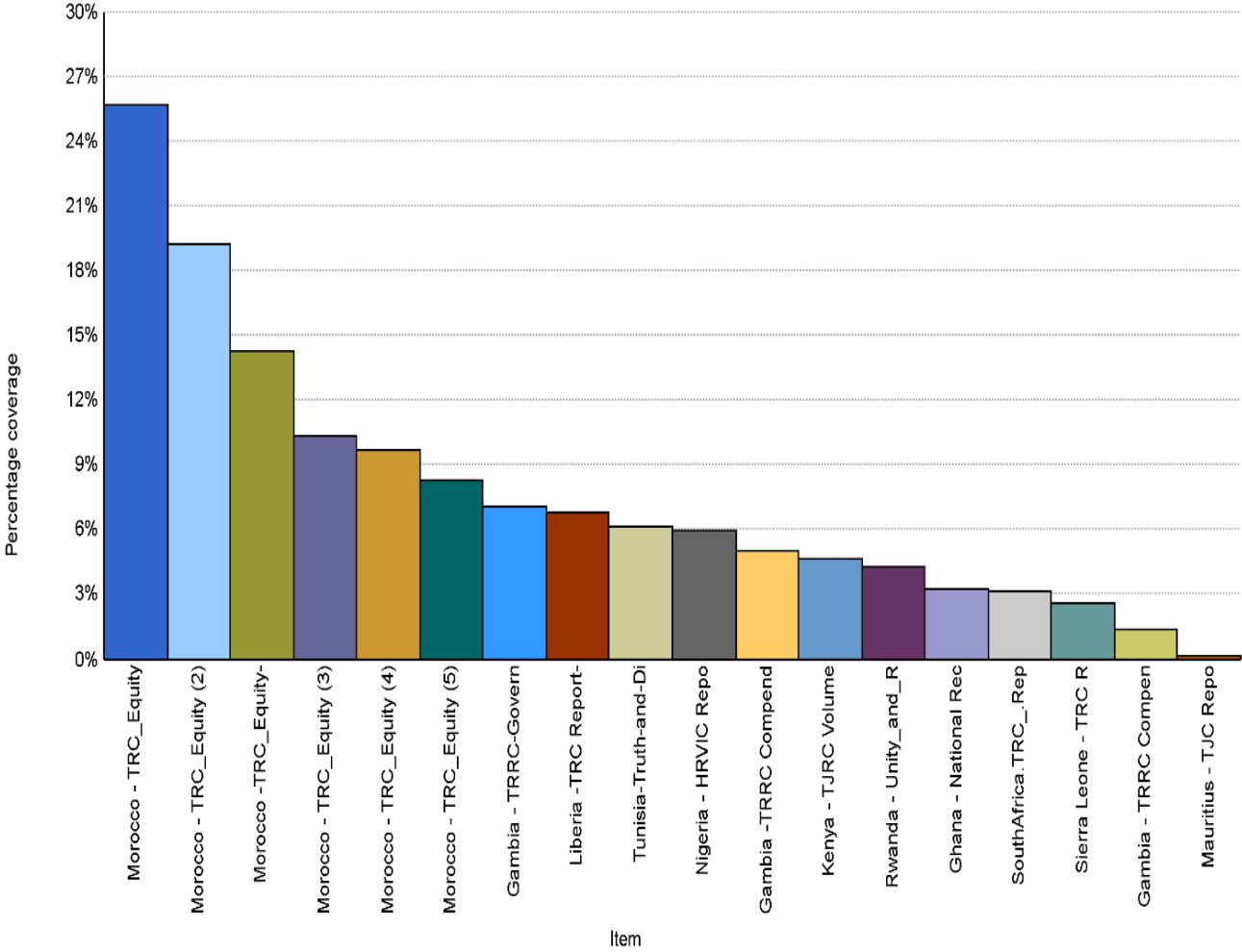
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1. On 22 July 1994, then 29-year-old army lieutenant Yahya Abdul-Aziz Jemus Junkung Jammeh came to power through a military coup d'état – having ousted the democratically elected President Sir Dawda Kairaba Jawara. For 22 years, Yahya Jammeh ruled The Gambia with an iron fist. During his regime, extrajudicial killings, rape, torture, enforced disappearances, and numerous grievous human rights violations became part and parcel of his military Junta.

2. Aided by his enablers including the Junglers (his professional killers) and the National Intelligence Agency (NIA), Yahya Jammeh used these instruments to entrench himself in power by instilling fear in the hearts of ordinary Gambian and/or anyone perceived to be in opposition to his regime. Fundamental human rights granted to all individuals in The Gambia and enshrined in domestic and international law were grossly violated by Yahya Jammeh, his agents, and enablers. Democratic rule was seemingly restored to the country with the introduction of the 1997 Constitution of the Republic of The Gambia, and the return to civilian rule through elections which saw the election of Jammeh as President under the Alliance for Patriotic Re-orientation and Construction Party (APRC). However, Jammeh's entire rule continued to be marred by gross human rights violations including arbitrary arrests and detentions; enforced disappearances; extrajudicial killings, torture; sexual and gender-based violations; and a general atmosphere of fear and intimidation along with disregard for rule of law.

Reference 4 - 0.13% Coverage

4. Upon assuming office in January 2017, the Coalition Government decided as a matter of priority to reflect on the autocratic regime, establish an accurate historical record of events over the past 22 years to prevent a recurrence, introduce legislative and policy reform, and promote national reconciliation through accountability. In furtherance of this objective, the country embarked on a national Transitional Justice process. The transitional justice process included the establishment of a Truth, Reconciliation and Reparations Commission, a Constitutional Review Commission, a National Human Rights Commission, a Commission of Inquiry into the Financial Dealings of Former President Yahya Jammeh his Family members and Close Associates as well as security sector and civil service reform.

Reference 5 - 0.01% Coverage

human rights from July 1994 to January 2017, in order to – (i)

Reference 6 - 0.22% Coverage

6. The Commission was headed by eleven Commissioners who were selected through a participatory and inclusive process that took into account The Gambia's ethnic, regional, gender, and religious diversity. A Secretariat headed by an Executive Secretary supported the work of the Commission. The Secretariat was comprised of specialised units, tasked with the responsibility of providing legal advice, conducting research and investigations, providing support to victims and witnesses, and engaging in communication and community outreach activities. Furthermore, the Commission established five sub-committees, on Human Rights, Reconciliation, Amnesty, Reparations, Child and Gender Violations as well as a special task force on Sexual and Gender-Based Violence.

7. Launched in October 2018, the TRRC started its hearings on 7 January 2019 examining the alleged human rights violations that occurred during the rule of former President Yahya Jammeh. During its operations, the TRRC recorded two thousand six hundred statements. From January 2019 to May 2021, a total of three hundred and ninety-two (392) witnesses testified before the Commission over eight hundred and seventy-one (871) days. Although most witnesses who testified were victims, there were also adversely mentioned persons and confessed perpetrators. The hearings covered 17 thematic areas which included: i.

Reference 7 - 0.02% Coverage

viii. Gross human rights abuses committed by the former President's death squad known as the "Junglers".

Reference 8 - 0.14% Coverage

of Justice which will consist of local and international experts mandated to carry out criminal investigations geared towards the prosecution of those who bear the greatest responsibility for the human rights abuses and violations are more specifically laid out in the White Paper.

20. Finally, the Government intends to create a special judicial framework within our domestic Court system for the prosecution of perpetrators of Human Rights abuses and violations. Legislative changes will be effected to give it jurisdiction over the offence of torture as well as over international crimes. The Court shall be located within The Gambia with the option of holding sittings in other countries based on the exigencies of each case. This option will balance the need to prioritise local ownership and victim participation with security concerns and witness protection requirements.

Reference 9 - 0.11% Coverage

21. The 1994 Coup d'état brought an end to one of the longest-serving democracies in Africa. Although the military coup was bloodless, to legitimise the coup and win public support the junta declared to The Gambian people that its style of governance would be guided by the principles of "transparency, accountability and probity", in practice, they ruled through fear and oppression. The Commission found that to consolidate its power the junta ruled by Decrees with the suspension of the 1970 Constitution through Decree No 30, the perpetration of egregious violations of fundamental human rights ranging from torture, inhumane and degrading treatment, and extra-judicial killings.

Reference 10 - 0.11% Coverage

36. The Government accepts the recommendation of the Commission. The reform of places of detention forms part of the legislative and institutional reforms that the government is undertaking to ensure detention does not equate to a violation of human rights. Following a review of the Prisons Act 1953, the government intends to amend this law relating to the custody of prisoners and regulating prisons to bring the law in line with international standards. Furthermore, following the Rapid Assessment on the Prisons, a strategy will be developed for a comprehensive reform of the prison system to ensure conditions in such places are in line with minimum international standards.

Reference 11 - 0.06% Coverage

39. The Government accepts the recommendation of the Commission. As part of the ongoing legislative reform, the Government has repealed or amended several laws that are contrary to The Gambia's human rights obligations. The government will continue to conduct a targeted review of its laws to ensure all individuals in The Gambia enjoy their human rights.

Reference 12 - 0.12% Coverage

Background 41. The events of November 11 and 12, consisted of an attempted coup by disgruntled soldiers of The Gambia National Army and a counter-coup marred by gross human rights violations led by the AFPRC Junta members and their loyalist soldiers at Yundum and Fajara Barracks.

42. The Coup was staged to overthrow the Junta members due to failed promises to improve the conditions of the soldiers following their support to secure the coup of 22 July 1994. Other motivating factors included the ongoing human rights violations committed by members of the Junta against members of the previous regime, poor welfare conditions of the soldiers at the military barracks, the need to restore democracy and for soldiers to return to the Barracks.

Reference 13 - 0.06% Coverage

47. The events following the capture of the soldiers by the Junta were marred by serious human rights violations and abuses, including extrajudicial killings, torture, arbitrary arrests, unlawful detention, and inhumane and degrading treatment in various locations at Fajara Barracks, Mile II Central Prisons, Yundum Barracks and at or around the Brikama forest.

Reference 14 - 0.04% Coverage

51. Following the November 11 events, several human rights violations and abuses took place. This included the unlawful arrest, detention and beating of the arrested soldiers. The said events negatively impacted The Gambia National Army soldiers' morale.

Reference 15 - 0.15% Coverage

62. The Government accepts the recommendation of the Commission in so far as it is in line with the Government's Prosecution Strategy for the cases emanating from the TRRC. The Commission revealed a series of gross human rights violations against individuals which had serious and longlasting impact on victims, their families and the Gambia as a whole. The Government is committed to implementing the recommendations of the Commission and ensuring that these violations are never repeated in The Gambia. The Government will therefore take all necessary steps to ensure that perpetrators are held accountable and victims provided with the appropriate support to heal. The Prosecution Strategy is

expected to guide the Government in holding perpetrators accountable and it is expected that this may include using plea deals to ensure that those who bear the greatest responsibility are successfully prosecuted.

Reference 16 - 0.10% Coverage

66. The Government accepts the recommendations of the Commission. The Government, however, notes that reform of the security sector goes beyond training, and includes other efforts to restructure the sector with a focus on evaluating personnel composition and competence. In this light, the recommendation forms part of the wider ongoing Security Sector Reform process where the Government seeks to ensure respect for and protection of human rights of all by the security sector with plans to restructure the army, set up a National Security Office and a Vetting Agency following the

Reference 17 - 0.09% Coverage

(8) Provide adequate training of all soldiers on courses in relevant international human rights law in general.

68. The Government accepts the recommendation of the Commission to the extent possible and will work closely with the National Human Rights Commission (NHRC) to ensure regular training on human rights for officials of the Gambia Armed Forces (GAF). The Government will also take necessary steps to review and integrate or review and update where available human rights into the training curricula of the GAF.

Reference 18 - 0.05% Coverage

71. The Government accepts the recommendation of the Commission. The Government will work through the GAF and the Ministry of Defence to ensure training programmes and courses of the GAF regarding human rights and the rule of law are accredited by reputable accreditation institutions.

Reference 19 - 0.07% Coverage

72. The Government accepts the recommendation of the Commission. The Government will take necessary steps to integrate or review and update where available human rights and respect for the rule of law in the curricula of the GAF. Additionally, the Government will take necessary steps to ensure GAF officials are appraised on understanding and compliance with human rights and respect for the rule of law as a basis for promotions.

Reference 20 - 0.04% Coverage

73. The Government accepts the recommendation of the Commission and will ensure training programs developed and introduced will work towards educating the GAF on human rights and the rule of law and changing the mindset of the Army for respect for established rules.

Reference 21 - 0.11% Coverage

134. The Commission found that both the PIU and the GNA were jointly and severally responsible for all the human rights violations perpetrated against the students on 10 and 11 April 2000. The argument that the students provoked the situation was deemed immaterial by the Commission - considering the brutal response and the use of unreasonable force by security personnel throughout the country. The

Commission also found evidence of torture of students detained. A student who was illegally detained and tortured at Janjanbureh Prison died shortly after his release. Many of the survivors still need urgent medical attention for injuries sustained.

Reference 22 - 0.03% Coverage

170. The Government accepts the Commission's recommendation and is committed to taking appropriate steps to ensure that those who bear the greatest responsibility for human rights violations are held accountable.

Reference 23 - 0.03% Coverage

(3) There should be a comprehensive review of the Public Order Act by the National Assembly with a view to amending it to be in line with international human rights instruments and customary standards.

Reference 24 - 0.24% Coverage

Background 177. Every individual in The Gambia has the right to seek, receive and impart information and ideas of their choosing without interference from others - be it government, individuals, or organisations. Freedom of expression is a fundamental human right enshrined in domestic and international law, and it is a fundamental right covered in detail in Article 10 of The Universal Declaration of Human Rights. This instrument is a necessary condition for the promotion of public participation, accountability, and democracy.

178. During his reign of terror, former President Yahya Jammeh sought to remain in power by any means possible and viewed the media as a great threat to his self-perpetuating objective. He knew that in the execution of their duties to provide information to the public, the media, which is pivotal for accountability and democracy, could greatly influence public opinion. Under the pretence of a civilian and democratic rule, former President Yahya Jammeh subjected Gambian journalists and the media in general to severe human rights violations. Journalists were jailed, threatened, tortured, or killed, and some simply made to disappear without a trace - leaving families and loved ones behind and in limbo, searching and wondering about the whereabouts of their loved ones. During the Jammeh regime, freedom of expression was limited to instil fear in the hearts of Gambians and the media in general - including print, electronic, and the broadcast media.

Reference 25 - 0.15% Coverage

191. The Government accepts the recommendation of the Commission. Domestic laws relating to media freedom and freedom of expression in general as enshrined in Article 10 of The Universal Declaration of Human Rights will be reviewed as part of the Government's overall objective to bring Gambian laws in line with international standards as they pertain to freedom of expression and the media.

(5) The government should: a) With immediate effect, repeal all repressive legislation, including legislation that does not comply with international and regional human rights law, particularly the Information and Communication (Amendment) Act 2013 and Criminal Code (Amendment) Act 2013; being criminal libel and defamation. The Newspaper Act; and b) Take all necessary steps to ensure that all journalists are able to freely exercise their right to freedom of expression without fear of arrest, detention, intimidation, or harassment.

Reference 26 - 0.05% Coverage

(11) Reform the Criminal Code to fully protect media freedom and freedom of expression, in particular by decriminalising sedition and defamation, ensuring that individuals' reputational interests can only be safeguarded through civil litigation, in conformity with international human rights law.

Reference 27 - 0.07% Coverage

(12) Ensure media independence, including through reforms to Chapter IV of the Information and Communications Act 2009 and the repeal of the Newspaper and Broadcasting Stations Act 1994 (as amended in 2004), in particular, to ensure that broadcast content regulation is within the competence of an independent regulatory body applying standards in compliance with international human rights standards, and ensure the

Reference 28 - 0.03% Coverage

(13) Review and reform legislation providing for government secrecy, such as the Official Secrets Act 1922, to bring it in line with international human rights standards.

Reference 29 - 0.02% Coverage

(14) Reform or replace Decree 81 (1996) on NGOs to comply with international human rights law, particularly Article 22 of the ICCPR.

Reference 30 - 0.04% Coverage

(24) Engage in comprehensive reforms to laws limiting the right to freedom of peaceful assembly to bring them into compliance with international human rights law, in particular the Public Order Act (repealing Sections

Reference 31 - 0.06% Coverage

Background 212. Freedom to practice any religion in The Gambia is provided for under section 25(1)(c) of the Constitution of The Republic of The Gambia, 1997. This is supported by numerous human rights laws such as the International Covenant on Civil and Political Rights (ICCPR) and Article 8 of the African Charter on Human and Peoples' Rights also known as the Banjul Charter.

Reference 32 - 0.05% Coverage

224. The Commission also found that the removal of members of the Ndigal Sect from Kerr Mot Ali, who were forced to resettle in Senegal amounts to deportation. This is contrary to international human rights law and criminalised in the Rome Statute which is applicable in The Gambia.

Reference 33 - 0.06% Coverage

(4) The Government should establish a Peace Committee for Kerr Mot Ali comprising of all relevant stakeholders including the National Human Rights Commission whose mandate would be to negotiate the resettlement of the exiled residents and restoration of peace and religious co-existence in Kerr Mot Ali with all the relevant stakeholders and National Human Rights Commission.

Reference 34 - 0.06% Coverage

231. The Government accepts the recommendation of the Commission and will work closely with the Ministry of Basic and Secondary Education and the National Human Rights Commission to review school curricula/modules on religious education provided in public schools to integrate religious tolerance and social cohesion. The Government through the Ministry of

Reference 35 - 0.09% Coverage

Theme 9: The Junglers - Unlawful Killings, Tortures and Other Human Rights Violations

Background 234. The 22-year rule of Former President Yahya Jammeh was characterised by mass human rights violation ranging from enforced disappearances, torture, unlawful killings, and arbitrary arrests and detention. Human rights violations were carried out systematically pursuant to a state orchestrated policy, to deliberately silence any form of dissent or threat to Jammeh's rule by the state security apparatus including the NIA, police, and the military.

Reference 36 - 0.04% Coverage

the people. Their existence was an open secret in the army and were avoided by senior members of the army implicitly giving them an additional air of invincibility to commit grievous human rights violations with impunity.

Reference 37 - 0.12% Coverage

239. The Junglers caused widespread fear and anxiety amongst Gambians which made it easy for dictatorship to flourish allowing former President Yahya Jammeh to violate human rights with absolute impunity. This emboldened him to make a statement on the State broadcaster that he would personally supervise the killing of anyone who destabilised the country.

240. The Commission found that most victims of the Junglers fall under three categories. There were those perceived by former President Jammeh as security threats; vocal critics of former President Yahya Jammeh who challenged and condemned his self-perpetuating rhetoric and violation of human rights; business and close associates who fell out of favour with Yahya Jammeh.

Reference 38 - 0.08% Coverage

263. The Government accepts the recommendation of the Commission. The government takes note of the report of the Amnesty Committee on the granting of immunity however immunity is not applicable to those who bear the greatest responsibility for the human rights violations during the period in question and for crimes against humanity. (3)

Introduce a mandatory course for all soldiers on Human rights and on the role of the military in a democratic society.

Reference 39 - 0.05% Coverage

264. The Government accepts the recommendation of the Commission. A course will be designed in consultation with The Gambia National Army and the National Human Rights Commission and incorporated into the training curricula of the GAF with refresher training provided for in-service officers.

Reference 40 - 0.06% Coverage

270. The Commission held hearings on the theme of the President's Alternative Treatment Programme to investigate Yahya Jammeh's extraordinary and dubious claims, and the treatment received by his patients. The scope of this theme was for the Commission to investigate whether the former President had violated any human rights during his delivery of that treatment.

Reference 41 - 0.04% Coverage

(9) Train all healthcare workers in The Gambia on HIV/AIDS stigma and discrimination and protecting the right to privacy and confidentiality of people living with HIV/AIDS, human rights and medical ethics in the context of HIV.

Reference 42 - 0.09% Coverage

Background 298. Widespread sexual and gender-based violence (SGBV) characterized Yahya Jammeh's twenty-two (22)-year rule as President of The Gambia. Sexual violence was often perpetrated either as the main objective of certain human rights violations or it was used as an instrument of repression, torture and punishment. Across The Gambia, women were disproportionately affected by violations including sexual violence, other forms of torture, cruel, inhumane and degrading treatment, arbitrary arrests, detention and forced labour.

Reference 43 - 0.08% Coverage

328. The Government accepts the recommendation the Commission and is committed to fulfilling its legal obligations in responding to human rights violations. Government will continue to prioritise and strengthen holistic measures and strategies to enable timely and effective response and investigation of reported cases of all violations of human rights and especially SGBV by providing financial resources, developing policies, protocols and SOPs and raising awareness.

Reference 44 - 0.08% Coverage

332. The Government accepts the recommendation of the Commission. Law enforcement officers have a critical role to play in preventing and responding to SGBV however without the required capacity, they risk secondary victimising and re-traumatising victims of SGBV. The Gambia has a number of international human rights obligations and extensive legal framework to prevent and address SGBV but these can only be effectively implemented if duty bearers have the capacity and attitudes towards

Reference 45 - 0.11% Coverage

337. The Government accepts the recommendation of the Commission. The Government reiterates its strong commitment to the protection of the rights of women and girls in The Gambia. Under the leadership of the Ministry of Gender, Children and Social Welfare, the Government will intensify its efforts in strengthening the implementation of existing laws and policies. Furthermore, the Government calls upon the National Human Rights Commission as an independent body to set up and lead a multi-sectoral SGBV working group that periodically investigates, promotes, reports and monitors state institutions' implementation of laws that protect women.

Reference 46 - 0.05% Coverage

338. The Government accepts the recommendation of the Commission. Gender inequalities and sexual and gender based violation has no place in The Gambia as they limit women and girls' enjoyment of their basic human rights and slow down the country's growth and development. The country

Reference 47 - 0.05% Coverage

361. The Government accepts the recommendations of the commission and will seek to collaborate with such institutions mentioned including CSO's and the National Human Rights Commission to create awareness of and change mind-sets and attitudes regarding the stigma of persons accused of witchcraft.

Reference 48 - 0.10% Coverage

382. The Government accepts the recommendation of the Commission and seeks to work closely with the National Human Rights Commission, CSO's such as ANEKED and other development partners to provide training to the justice and security personnel on the illegality of enforced disappearances. The Government will intensify its efforts through the Ministry of Justice to accelerate the domestication of the International Convention for the Protection of All Persons from Enforced Disappearance ratified in 2018 to ensure a national legal framework is in place to protect against enforced disappearances.

Reference 49 - 0.09% Coverage

386. Following local and international outcry from human rights activities/groups, and the Ghanaian Foreign Minister at the time Nana Akufo Addo's meeting with President Yahya Jammeh, and his press statement on 16 August 2005, an investigation was launched in 2005 to investigate the killings of the West African migrants. The investigation panel was headed by Malamin Cessay, a former Commissioner of the Gambian Police Force. However, the investigation was blighted with falsehoods, cover-ups, and destruction of evidence.

Reference 50 - 0.08% Coverage

(4) Provide training to the members of the security forces on the relevance of ECOWAS human rights instruments and their applicability.

403. The Government accepts the recommendations of the Commission. The Government notes that this forms part of ongoing Security Sector Reform process however it will also work closely with the National Human Rights Commission and other international human rights bodies to ensure regular training for security forces on human rights.

Reference 51 - 0.22% Coverage

After the military coup d'état of 22 July 1994, former President Yahya Jammeh's military Junta adopted several draconian laws to curtail human rights and freedoms. In essence, that was the beginning of the military government's plan to rule by fear and remain in power. To achieve their goal, Decree No. 13 was passed on 3 November 1994 to establish the National Intelligence Agency (NIA) – replacing the ousted democratically elected President Sir Dawda Kairaba Jawara's National Security Service (NSS) whose brief was mainly intelligence gathering and state security. Decree No. 13 was repealed by Decree No.45 on 29

June 1995 which outlines the functions of the NIA and gave it enormous powers including powers formerly exercised by the police—to investigate and intervene in matters of private nature and those relating to national security. Section 1(a) provides the NIA powers to “obtain and provide the government with information relating to actions or intentions of persons which may be a threat to state security.” Section 1(a), along with other provisions laid out in Decree No. 45 gave the NIA unlimited powers, and Section 3(a) to (f) changed its function as an intelligence gathering Agency to an institution working for and on behalf of Yahya Jammeh—which President Jammeh could utilise to deprive Gambians of their rights and freedoms.

Reference 52 - 0.12% Coverage

407. The NIA was divided into several Units during its designation as the NSS – including the Counter Espionage Unit; Political and Dissidents Unit; Economic Sabotage Unit; External Security Unit; and the Operations Room. Following its transformation into the NIA, an Investigation Unit was created followed by the creation of the Special Operations Unit much later. The Investigative Unit and Special Operations Unit undertook the roles and responsibilities previously assigned to the police, the drug enforcement authority, the Immigration Department, etc. Created in 2007, the Special Operations Unit became infamous for its brutality, total disregard for due process, and human rights and fundamental freedoms.

Reference 53 - 0.10% Coverage

weapons of choice, utilised by the former dictator against the people and anyone who opposed his regime. Torture, sexual violence against women detainees, unlawful arrests, enforced disappearances, destruction of evidence, were some of the tools utilised by the Agency to advance Jammeh’s cause. Since its inception, it has been involved in numerous gross abuses of human rights in its attempt to sustain former President Jammeh in power. Individuals who have been arrested or detained in its detention centres became a cross cutting during the TRRC hearing, affecting most, if not all the themes during the Commission’s public hearing.

Reference 54 - 0.10% Coverage

416. To spy on citizens with the view to keep Yahya Jammeh in power, the NIA deployed agents to various governmental offices including the National Water and Electricity Corporation (NAWEC). During their operation, they committed numerous human rights violations and abuses. Between 2001 and 2003, the NIA operative Omar Cham was posted to NAWEC where he admitted to the Commission of torturing NAWEC staff including Gibril Wakka, Musa Oldie Jawo, Famara Naso, Simon Grant, and Sainabou Keita. He however denied torturing Ebou Khan and Bakary Saho but Commission did not believe him.

Reference 55 - 0.10% Coverage

423. The Government takes note of the recommendation of the Commission but equally notes that torture is a serious crime and a serious violation of human rights. The Government recognizes the need to balance investigations and prosecutions from the recommendations stemming from the Commission to ensure successful convictions of those who bear the greatest responsibility for the violations committed. (6) Reprimand Lt. Col Amadou Bojang, Ebrima Ceesay, Babucarr Trawally, Alpha Bojang and Babucarr Singhateh for the torture and unlawfull detention of Pa Alasan Jallow, Ebrima Keita and Musa Fofana.

Reference 56 - 0.11% Coverage

424. The Government takes note of the recommendation of the Commission but equally notes that torture is a serious crime and violation of human rights. Government recognizes the need to balance investigations and trials from the recommendations stemming from the Commission to ensure successful convictions of those who bear the greatest responsibility for the human rights violations. The Government directs the relevant authorities to make further investigations to dismiss and ban Lt. Col Amadou Bojang, Ebrima Ceesay, Babucarr Trawally, Alpha Bojang and Babucarr Singhateh from working in the security services and consider the possibility of charging them with torture domestically.

Reference 57 - 0.08% Coverage

(8) Ban the following present and former NIA officials who directly and indirectly participated in the torture of detainees and other gross human rights violations and abuses from holding any office with the government of The Gambia for a minimum of 10 years which the Commission believes commensurate with the severity of their actions: Lamin Bo Baaji, Tejan Bah, Foday Barry, Ebrima Jim Drammeh, Salimina Drammeh, Momodou Hydara, Ousman Jallow, Lamin Jobarteh (Babadinding), Baba Saho

Reference 58 - 0.10% Coverage

433. The Government accepts the recommendation of the Commission. Arbitrary detention of individuals is unacceptable and any detention must be lawful and in compliance with the country's human rights obligations, however, it recognizes the importance of state security, and to strip the NIA of a detention facility may interfere with national security. Based on the foregoing, the Government is unable to accept this recommendation in its totality but is committed to taking relevant measures to ensure minimum standards for all detention facilities and that any detention is in line with minimum international standards.

Reference 59 - 0.04% Coverage

All NIA staff undergo adequate and comprehensive training to inculcate the culture of discipline and values that promote respect for fundamental human rights and freedoms and upholding the rule of law in a democratic system.

Reference 60 - 0.16% Coverage

436. The Gambia is a party to key human rights instruments including the International Covenant on Civil and Political Rights (ICCPR) in 1979, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT). The Basic Principles for the Treatment of Prisoners, adopted and proclaimed by UN General Assembly resolution 45/111 of 14 December 1990, provides under Article 1, that "All prisoners shall be treated with the respect due to their inherent dignity and value as human beings". Article 5 of The Basic Principles holds further that, except for limitations that are made demonstrably necessary by the condition of their imprisonment, all prisoners must be afforded the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights as well as the ICESCR, the ICCPR and other rights found in other United Nations covenants.

Reference 61 - 0.09% Coverage

440. The Commission found that many innocent victims including security officers, politicians, business persons, journalists and advocates were detained at Mile II Central Prison without due process. They were subjected to inhumane and degrading treatment, tortured and some died as a result. The Standard Minimum Rules for the Treatment of Prisoners, developed by the United Nations Commission on Crime Prevention that contained provisions protecting the human rights and personal liberties of detainees, were not applied.

Reference 62 - 0.09% Coverage

In addition to admitting persons to the prisons without due process and in contravention of the laws governing the prison, stipulating the times when arrestees can be interned or removed from the prisons, the prison authorities, the NIA and other state institutions and agents also engaged in a number of gross human rights violations in their handling of prisoners. The NIA and Junglers enjoyed unrestricted access to the prisoners and could inflict any sort of treatment on prisoners without interference by the prison authorities under whose authority they were in.

Reference 63 - 0.04% Coverage

To repeal and replace the existing archaic prison laws with more human rights oriented and progressive laws that meet the requirements of a modern democratic society and the United Nations Standard Minimum Rules for the treatment of Prisoners.

Reference 64 - 0.04% Coverage

474. The Government takes note of the recommendation but takes note that it is contrary to international human rights standards and section 218 (2) of the Children's Act which prohibits the imprisonment of nursing and expectant mothers.

Reference 65 - 0.07% Coverage

Background 477. Despite the legal frameworks stipulated in the 1997 Constitution, Acts of the National Assembly and International Instruments ratified by The Gambia aimed at ensuring justice and the protection of fundamental human rights, the regime of Yahya AJJ Jammeh interfered and undermined the independent functioning of public institutions such as the Judiciary, the Ministry of Justice, The Gambia Police Force and National Intelligence Agency.

Reference 66 - 0.06% Coverage

In addition, the Commission found that during the 22 years of Yahya Jammeh's regime, journalists, human rights defenders were arbitrarily arrested for long periods without access to lawyers or the courts thereby subjecting them to gross human rights violations resulting in self-imposed exiles for some journalists and human rights defenders.

Reference 67 - 0.17% Coverage

506. Reparations form an important component of The Gambian Transitional Justice Process. Reparations seek to restore the dignity of victims through acknowledging the wrongdoing, the harm suffered and the

state responsibility to promote, protect and fulfil human rights. It is therefore an important component of The Gambia's healing process.

507. The right to reparations for victims of gross violations of human rights is well founded in the TRRC Act 2017 which is informed by the AU Transitional Justice Policy and international law all of which make specific provisions on reparations. Section 20 of the Act provides for the grant of reparations to victims and for the Commission to develop regulations in furtherance of this objective. In compliance with these provisions and as per Section 18 of the TRRC Act and the Rules of Procedures of the Commission, a Reparations Committee was established consisting of five Commissioners. The Committee was supported by the Victim Support Unit (VSU) and the Legal Unit.

Reference 68 - 0.02% Coverage

Community reconciliation initiatives in communities that were divided as a result of the human rights violations that took place in those communities.

Reference 69 - 0.02% Coverage

suffering of victims, and through its Never Again agenda prevent past human rights violation from recurring.

Reference 70 - 0.10% Coverage

542. The Commission noted with concern that only men participated in the individual reconciliation activities facilitated by the TRRC. There were no reconciliation activities between perpetrators and women or children although these two groups make up a large number of victims that suffered from numerous human rights violations.

543. Finally, the Commission noted that lustration can be an alternative or supplement to retributive justice by disqualifying agents or officials of the former regime responsible for the human rights violations by excluding them from public service and disqualifying them from holding political office.

Reference 71 - 0.09% Coverage

548. The Government accepts the recommendation of the Commission. The effects of decades of violence and abuse still remain alive in the lives of victims and communities. For sustainable peace to be achieved, the government recognises that a broad range of actors needs to continue to come together to develop holistic strategies to support individuals and communities that experienced grievous human rights violations. Gambians recognize that traditional and faith-based organisations offer wisdom and inspire healing and renewing relationships. Similarly, women in The Gambia

Reference 72 - 0.06% Coverage

552. The Government notes the recommendation of the Commission. The support of the United Nations system in the country and the international community in the transitional justice process cannot be overemphasised. The Government will continue to collaborate with them to realise its objectives of fully restoring good governance, democracy, and respect for human rights in The Gambia.

Reference 73 - 0.20% Coverage

In the context of transitional justice, memorialization is used to honour victims of human rights abuses. Memorialisation is a key feature of the National Strategy for Transitional Justice in The Gambia and formed part of the TRRCs Reparations mandate as it contributes to the acknowledgment of victims and documenting of past human rights violations. As a symbolic reparation, memorialisation can play a pivotal role in driving societies towards reconciliation and transformation by providing opportunities for dialogue. In its final report, the Commission noted that it was unable to fulfil this essential component of its mandate.

554. The Commission had started the process of renaming Arch 22 as a way of honouring victims of human rights abuses and to serve as a constant reminder to all persons passing under the Arch of the gross human rights violations that occurred in the country and motivate them to commit to non-recurrence. The Commission worked extensively with the NCAC in the planning of the Project. However, the Commission initiative did not materialise. Consequently, the National Council for Arts and Culture (NCAC) was identified to finalise the implementation of the activity.

Reference 74 - 0.06% Coverage

this report. The Government recognises the importance of memorialisation as a way of acknowledging and remembering all victims of human rights violations. The Government will consult with victims and victim led organisations on the development and implementation of a comprehensive national memorialisation framework that represents all victim groups.

Reference 75 - 0.23% Coverage

The National Human Rights Commission (NHRC) Background 559.

In December 2017, the Government of The Gambia enacted a series of laws setting up a Constitutional Review Commission (CRC), a Truth, Reconciliation and Reparations Commission (TRRC) as well as a National Human Rights Commission (NHRC). These instruments and institutions form the broader framework of the Transitional Justice Process intended to enable the country to transition from the Jammeh dictatorship – during which Gambians suffered gross violations of human rights to a democratic dispensation.

560. The TRRC had a limited time span to carry out its mandate of investigating and establishing an impartial historical record of the nature, causes and extent of violations and abuses of human rights committed during the period of July 1994 to January 2017 and to consider the granting of reparations to victims and for connected matters.

561. The NHRC however is a permanent independent body with a mandate to promote and protect human rights and fundamental freedoms through monitoring, receiving, investigating and considering human rights violations in The Gambia as well as assisting the Government in formulating appropriate policies with respect to human rights. Due to the complementary mandates of the two commissions, the NHRC is well positioned to monitor implementation of the TRRC recommendations.

Reference 76 - 0.11% Coverage

564. The Government accepts the recommendation of the Commission. The NHRC is an independent body with the statutory mandate to promote and protect human rights. The NHRC is therefore well placed to monitor the implementation of the Report and make recommendations to Government on better implementation as well as report to the National Assembly annually on the status of implementation.

(2) That the NHRC be responsible for the archiving and digitalisation of documents, information and materials emanating from the TRRC to help in the preservation of the impartial historical record of human rights violation that the TRRC was mandated to establish.

Reference 77 - 0.07% Coverage

567. The Commission developed amnesty guidelines which included the procedure for making an application, the eligibility criteria and the evaluation process. The predominant criteria were whether the application complies with section 19(1) of the TRRC Act 2017, whether the applicant has made full and truthful disclosure of all relevant facts of his or her involvement in human rights violations and if the applicant has expressed remorse.

Reference 78 - 0.13% Coverage

(16) The Commission recommended for the denial of the application by Edward Dennis Singhatey on the basis that his application contradicted the process for applying for Amnesty by not being endorsed by him but rather by his lawyer. The Commission went further to state that even if it was signed by him, he had not given full disclosure as he was untruthful in his testimony. Furthermore, he showed no remorse except for his human rights violations towards Sanna B. Sabally. The Commission considered him amongst one of the people who bear the greatest responsibility for the human rights violations that took place during the November 11th unlawful killings and tortures, the death of Ousman Koro Ceesay and the torture of Sanna B Sabally, Sadibou Hydara and Baboucarr Sanyang.

Reference 79 - 0.10% Coverage

(17) The Commission recommended for the denial of the application of Peter Singhatey Singhatey on the basis that his application contradicted the process for applying for Amnesty by not being endorsed by him but rather by his lawyer. The Commission went further to state that the Applicant did not testify before the Commission, did not submit a written statement and did not give full disclosure of his participation in the crimes he was found to have participated in his Amnesty application. The Commission found Peter amongst one of the people who bear the greatest responsibility for the human rights violations that took place.

Reference 80 - 0.07% Coverage

594. The Government rejects the recommendation of the Commission as pertains to Sanna Sabally and notes that although he might have made full disclosure and showed remorse, Sanna is one of the individuals that bears the highest responsibility for gross human rights abuses and violations in the early days of the Jammeh regime, particularly the extrajudicial killing of many soldiers on November 11th, 1994.

Reference 81 - 0.06% Coverage

600. Finally, the Government reiterate its unwavering commitment to the implementation of the TRRC Report as set out in this White Paper, with a view to ensuring reconciliation and national healing, accountability and justice for victims of gross human rights abuses and violations, the provision of reparation for victims, broad institutional reforms and ensuring non-reoccurrence.

Gambia -TRRC Compendium Part A Final> - § 82 references coded [5.05% Coverage]

Reference 1 - 0.01% Coverage

STATEMENT AND RECOMMENDATION ON THE NATIONAL HUMAN RIGHTS COMMISSION (NHRC)

Reference 2 - 0.01% Coverage

GCVHRV Gambia Centre for Victims of Human Rights Violations GMDA

Reference 3 - 0.03% Coverage

National Drug Law Enforcement Agency National Disaster Management Agency National Human Rights Commission National Intelligence Agency National Reconciliation Party
Office of the High Commissioner for Human Rights Presidential Alternative Treatment Programme

Reference 4 - 0.06% Coverage

legislative body, the then Attorney General and Minister of Justice, Hon. Abubacarr Tambadou said that “the objects and reasons for this Bill are that it is imperative for The Gambia to carry out a thorough investigation of the human rights violations and abuses of the past 22 years. It is important to have an accurate and impartial historical record of the violations, document them for posterity to ensure that never again do we encounter a recurrence of such abuses.”

Reference 5 - 0.08% Coverage

Justice Minister Abubacarr Tambadou and current Justice Minister Dawda Jallow and their respective SGs have consistently adopted an open door policy and ready ear for the TRRC, and have done much to facilitate the Commission’s work. The Commission is equally grateful to the United Nation’s Peace Building Support Fund in New York who, through UNDP-Gambia’s Transitional Justice Project, funded a significant number of the TRRC’s projects. The Commission also wishes to acknowledge the significant contributions to its work of the Dakar-based Office of the High Commissioner for Human Rights and the United Nations Office for West Africa and the Sahel.

Reference 6 - 0.05% Coverage

Some of the Commission’s key local partners during the execution of its mandate were the Gambian religious and civil society communities. The Commission sincerely acknowledges the contributions to its work of the Gambia Centre for Human Rights Violations (Victims Centre), the African Network against Extrajudicial Killings and Enforced Disappearances (ANEKED), the Association of Non-Governmental

Reference 7 - 0.02% Coverage

create an impartial historical record of violations and abuses of human rights from July 1994 to January 2017, in order to – (i)

Reference 8 - 0.10% Coverage

Following the establishment of its subsidiary bodies as provided for under Section 18 of the Act (Committees on Human Rights Violations and Abuses, Amnesty, Reparations, Child Protection and Sexual and Gender-based Violence, and Reconciliation), and adoption of its provisional rules of procedure, the Commission, on 7th January 2019, began holding public hearings. It structured the public hearings on the general themes of its mandate, i.e. gross violations and abuses of human rights and enforced disappearances during the period under review (July 1994 – January 2017). The Commission appointed members of the various committees from among the Commissioners who would be assisted by members of the Legal Team and relevant units of the Secretariat. The Committees met to draw up their respective terms of reference and work programmes.

Reference 9 - 0.10% Coverage

Evidence from these witnesses show that a wide range of human rights violations were committed by the Government of the Gambia between July 1994 and January 2017. The violations detailed by witnesses included widespread abuse of public office, arbitrary arrests and detentions, extrajudicial killings, enforced disappearances, sexual and gender-based violence, witch hunting, inhumane and degrading treatment, fake HIV-AIDS treatment, and widespread and systematic torture especially by the Junglers and officials of the National Intelligence Agency, both outfits directly under the Office of former president Yahya Jammeh and taking orders and instructions only from the former president. These violations are extensively highlighted in this final report and also inform the Commission's findings and recommendations.

Reference 10 - 0.06% Coverage

vi. TRRC Resource Mobilization Policy vii. TRRC Policy For The Reparations Process viii. TRRC Reparations Regulation, 2020 ix. TRRC Memorialization Concept Note x. United Nations Universal Declaration of Human Rights xi. Convention Against Torture and other Cruel, Inhuman or Degrading Treatment xii. African Charter on Human and Peoples' Rights xiii. Diaspora Submission to the TRRC xiv. Women In Liberation And Leadership (WILL) Recommendations to the TRRC xv. Women's Association For Victims' Empowerment (WAVE) Policy Brief

Reference 11 - 0.17% Coverage

A separate set of documents that will be submitted with this final report are volumes of verbatim transcripts of witness testimonies. The words of every witness who testified in the Commission's public hearings were recorded, transcribed verbatim and published into volumes that will be made available to government institutions and the general public. These volumes provide invaluable primary source material for future researchers and are indispensable to the creation of a true historical record of the human rights violations and abuses that happened in The Gambia under the Jammeh dictatorship. These volumes, on the Transcripts of Witness Testimonies, cover the themes investigated by the Commission as listed below: a. July 22, 1994 Coup b. November 11, 1994 Coup c. Unlawful Arrests and Detentions d. 2006 UDP Incident e. 2006 Alleged Coup & Yankuba Touray f. Attacks on Road Users g. Attacks on Religious Freedom h. Attacks on Journalists and the Media i. April 10/11 2000 Incident j. Presidential Alternative Treatment Programme k. Sexual and Gender-Based Violence l. The Junglers: Unlawful Killings, Tortures and other Human Rights Violations m. Witch-Hunt Exercise: Regional Hearings n. Institutional Hearings: National Intelligence Agency (NIA) o. Institutional Hearings: Prisons p. Institutional Hearings: Justice Sector Entities q. Killing of West African Migrants and Enforced Disappearances

Reference 12 - 0.09% Coverage

The July 22, 1994, coup d'état abruptly ended one of Africa's longest-serving functioning democracies, with a reputation for its commitment to human rights, the rule of law and democracy. After being in power from 1965, despite winning elections at the constitutionally mandatory five (5) year intervals, President Sir Dawda Kairaba Jawara lost a considerable degree of legitimacy in the eyes of ordinary Gambians due to rising discontent on what many attributed to the slow pace of development and accusations of corruption. Within the context of political power and the country's direction there was a gap between the government and the governed. This facilitated the easy take over by coupists for many Gambians wanted a change of leadership.

Reference 13 - 0.06% Coverage

The unlawful arrests and detention of O.J Jallow, Alhagie M.C. Cham, Alhagie Alieu EWF Badjie (Kama), Omar Sey and the other PPP Ministers in the wake of the takeover, disregarded their basic fundamental rights and freedoms. The arbitrary arrests and unfettered use of military power became the blueprint for what became normalised for twenty-two (22) years under Yahya Jammeh. Human rights violations, abuse of power and authority, blatant disregard for the rule of law and fair dispensation of justice became the norm.

Reference 14 - 0.05% Coverage

19. Yahya Jammeh, the Chairman of the AFPRC Junta was jointly and severally culpable for all the tortures, cruel, inhuman and degrading treatment of the PPP detainees and serious human rights violations committed against the detainees because according to the evidence of Edward Singhaty, the Commission can draw adverse inference that he ordered these rights violations or at least had reasonable knowledge of them and failed to stop them.

Reference 15 - 0.08% Coverage

On the eve of November 11, 1994, the Armed Forces Provisional Ruling Council ("AFPRC") Junta members and their loyalist soldiers of The Gambia National Army ("GNA") attacked Yundum and Fajara Barracks with the intention of "crushing" disgruntled GNA officers and men who were attempting to stage a counter-coup d'état. In the process, the AFPRC Junta members and their loyalist soldiers committed serious human rights violations and abuses, including extrajudicial killings, torture, arbitrary arrests, unlawful detention, and inhumane and degrading treatment in various locations at Fajara, Mile II Central Prisons, Yundum Barracks and at or around Brikama forest.

Reference 16 - 0.03% Coverage

The response of the Junta members and their loyalists to the attempted counter coup which began on the night of November 10, 1994, and the following days, involved further commission of crimes and human rights violations.

Reference 17 - 0.14% Coverage

The planned countercoup of November 11, 1994, was motivated by several reasons. These include (a) the human rights violations and abuses that were going on being committed by members of the Junta against members of the previous regime including the torture and humiliation of the ministers and senior

officials of the ousted Jawara regime, (b) poor welfare conditions of the soldiers at the military barracks, (c) unfulfilled promises by members of the Junta to improve the conditions of the soldiers in the GNA and (d) the need to restore democracy and for soldiers to return to Barracks. However, it appears to the Commission that the principal reason was that there was dissatisfaction among the soldiers that their colleagues who had moved on to become the government of the day with all the benefits that came with it. They however, did not keep the promises made to the soldiers to improve their general condition after their hard work of securing and consolidating the July 22 coup of 1994. In essence, the November 11, 1994, countercoup was launched mainly to punish the AFPRC for not keeping their promise to uplift the general condition of soldiers in the GNA.

Reference 18 - 0.02% Coverage

The victims of human rights violations and abuses include the following GNA officers who were extra-judicially killed and/or tortured by the Junta and soldiers acting on their orders: i.

Reference 19 - 0.01% Coverage

Provide adequate training of all soldiers on courses in relevant international human rights law in general.

Reference 20 - 0.04% Coverage

members of the crowds waiting to see Former President Jammeh and the other noted human rights violations that arose from the actions of the soldiers protecting the convoy. These include throwing of biscuits and T-shirts while the convoy was moving at top speed, failure to acknowledge the convoy and perceived threats to the convoy

Reference 21 - 0.08% Coverage

This report will provide the testimonies of victims that were presented at the public hearing of the TRRC on this theme and from other witness testimonies emanating from other themes as well and from the written statements that were submitted to the Commission. It will also present the testimonies of perpetrators and adversely mentioned persons and use this evidence to identify the human rights abuses and violations that occurred during this unfortunate incident which is described by many as "one of the darkest days in The Gambia." Finally, recommendations will be made for the reform of those key institutions involved in perpetrating the atrocities.

Reference 22 - 0.10% Coverage

The evidence received by the Commission with regards to the Kanifing Municipality (KMC) suggest that all the shootings were done by the PIU officers. However, the commission of enquiry into April 10 and April 11 disturbances and other subsequent evidence indicate that both the PIU and the Army wore the same uniforms. As such, witnesses could have been mistaken as to the security entity that carried out the shooting at that material time. This makes it impossible under the circumstances for the Commission to state exactly which service is responsible for the shooting. However, it is evident that both the PIU and the Army were on the ground. Hence, both outfits are individually and severally responsible for all the human rights violations perpetrated against the students on April 10 and 11 2000.

Reference 23 - 0.03% Coverage

Momodou Ceesay and PIU officers under his command violated the fundamental human rights of students by beating, torturing and unlawfully arresting Alhagie S. Darboe, Omar Joof, Alieu Darboe, Baboucarr Jonga and two other unknown females.

Reference 24 - 0.02% Coverage

There should be a comprehensive review of the Public Order Act by the National Assembly with a view to amending it to be in line with international human rights instruments and customary standards.

Reference 25 - 0.02% Coverage

There should be a comprehensive review of the Public Order Act with the view to amend it to bring it in conformity with international human rights standards.

Reference 26 - 0.05% Coverage

Under the pretence of a civilian and democratic rule, Yahya Jammeh, the then president of The Gambia from 1994 to January 2017, subjected Gambian journalists to severe human rights violations. Journalists were jailed, threatened, tortured, disappeared, exiled or killed. Yahya Jammeh and his agents limited freedom of expression to instil fear in everyone, including the media, whether print or broadcast.

Reference 27 - 0.05% Coverage

The Commission heard testimonies of seventeen (17) witnesses who were mainly journalists and media practitioners who suffered human rights violations in the hands of state agents. The Commission heard testimonies on the extrajudicial killing of Deyda Hydara in 2004 and how this incident was a turning point on the attacks meted on journalists on orders of Yahya Jammeh given to security agents.

Reference 28 - 0.09% Coverage

Consistent with his primary objective of self-perpetuation in power as evident in his statements that he would rule The Gambia "for one billion years", Yahya Jammeh took all necessary steps to remove or neutralise any threats including the media to his position as head of State of The Gambia. He targeted journalists and media houses, denouncing and attacking media practitioners and calling them "illegitimate sons of Africa" and other such names as he did the Coalition of Human Rights Defenders who also sought justice against human rights violations perpetrated by the Jammeh regime. He subjected them to gross human rights violations to the extent that many of them left the country and went into self exile for fear of further/being persecuted.

Reference 29 - 0.02% Coverage

All these put together establish clear indicia by which responsibility for these crimes / human rights violations can be placed squarely on the shoulders of Yahya Jammeh and the Junglers.

Reference 30 - 0.04% Coverage

5. With immediate effect, repeal all repressive legislation, including legislation that does not comply with international and regional human rights law, particularly the Information and Communication (Amendment) Act 2013 and Criminal Code (Amendment) Act 2013; being criminal libel and defamation. The Newspaper Act;

Reference 31 - 0.04% Coverage

Reform the Criminal Code to fully protect media freedom and freedom of expression, in particular by decriminalising sedition and defamation, ensuring that individuals' reputational interests can only be safeguarded through civil litigation, in conformity with international human rights law.

Reference 32 - 0.07% Coverage

Ensure media independence, including through reforms to Chapter IV of the Information and Communications Act 2009 and the repeal of the Newspaper and Broadcasting Stations Act 1994 (as amended in 2004), in particular, to ensure that broadcast content regulation is within the competence of an independent regulatory body applying standards in compliance with international human rights standards, and ensure the establishment of an independent public service broadcaster and the transformation of the GRTS into a public service broadcaster.

Reference 33 - 0.04% Coverage

Review and reform legislation providing for government secrecy, such as the Official Secrets Act 1922, to bring it in line with international human rights standards.
Reform or replace Decree 81 (1996) on NGOs to comply with international human rights law, particularly Article 22 of the ICCPR.

Reference 34 - 0.04% Coverage

Engage in comprehensive reforms to laws limiting the right to freedom of peaceful assembly to bring them into compliance with international human rights law, in particular the Public Order Act (repealing Sections 5 and 167), repealing Sections 15(A) and 72 of the Criminal Code, and the Indemnity Act;

Reference 35 - 0.10% Coverage

The freedom of conscience to choose and freely exercise one's religion is a fundamental human right protected by numerous modern human rights laws such as the International Convention on Civil and Political Rights (ICCPR) and Article 8 of the Banjul Charter, which states -Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms. In The Gambia, section 25(1)(c) of the Constitution of The Republic of The Gambia, 1997 guarantees every person in The Gambia the freedom to practice any religion and manifest such practice. However, under the span of twenty-two (22) years of Yahya Jammeh's regime, these freedoms were gradually eroded, similar to many of the other fundamental freedoms guaranteed by the 1997 Constitution.

Reference 36 - 0.09% Coverage

regime. An expert witness, Professor Abdoulaye Saine who was commissioned by the TRRC to analyse the antecedents that contributed to the gross human rights violations that occurred in The Gambia between July 1994 and January 2017 also testified and this is what he had to say: "Thus, religious leaders and marabouts, sometimes one and the same, wield considerable power over all aspects of society. In doing so, they not only serve as intermediaries and intercede on behalf of and between believers and God, but they also help legitimize those in power. The belief that a "leader" is sanctioned and installed by God, is commonly shared by all- the sub-text of which is: one does not challenge leaders installed by God, because when you do, you challenge God."

Reference 37 - 0.04% Coverage

Seventeen (17) witnesses testified under this theme including the n'digal sect, a nonconformist Islamic religious sect based in the Central River Region of the country who were subjected to gross violations of their human rights resulting in their being forced to leave their homes and to settle in neighboring Senegal. .

Reference 38 - 0.03% Coverage

The removal of members of the Ndiggal Sect from Kerr Mot Ali in The Gambia, who have been pushed to live in Senegal amounts to forced exile and is impermissible under international human rights law and is proscribed /criminalized in the Rome Statute which is applicable in The Gambia.

Reference 39 - 0.04% Coverage

The Government should establish a Peace Committee for Kerr Mot Ali comprising of all relevant stakeholders including the National Human Rights Commission whose mandate would be to negotiate the resettlement of the exiled residents and restoration of peace and religious co-existence in Kerr Mot Ali.

Reference 40 - 0.01% Coverage

Unlawful Killings, Tortures & Human Rights Violations

Reference 41 - 0.12% Coverage

Yahya Jammeh's 22 years of dictatorship was characterised by heinous human rights violations ranging from enforced disappearances, torture, unlawful killings and unlawful detentions. These were systemically carried out by the state security apparatus such as the NIA, police and the military, pursuant to a state orchestrated policy, to deliberately silence any form of opposition and threat to Yaya Jammeh's rule. Under the constitution, the President is the Commander in Chief of The Gambian Armed Forces, consisting of the Navy, Air Force and such other services established by statute. The principal functions of the Army are to defend the sovereignty and territorial integrity of The Gambia, aid civil authorities during emergencies and national disasters and engage in productive activities that are of interest to the livelihood of the citizens. In doing so, the army is required to respect the fundamental rights and freedoms of citizens.

Reference 42 - 0.12% Coverage

They were feared, hence senior members of the army avoided them which implicitly gave them an additional air of invincibility to continue to commit serious human rights violations with impunity. They were considered untouchable because of their closeness to the president and the protection he accorded them. The group was first referred to as the "Patrol Team" and later "Junglers" in reference to the military jungler training most members of the group underwent. In 2006, the activities of the group started to become known to the general public, mainly because of the horrific nature of the atrocities they committed. Cases in point concerned the arson attack on the Independent Newspaper by the Junglers and the cruel aftermath of the Ndure Cham foiled coup. It was then that they became known as "Black Black", derived from their dark dress code during operations. They were an amorphous group with fluid membership, at one point comprising of at least 40 personnel drawn from the President's Guards Unit of the army.

Reference 43 - 0.06% Coverage

As part of its mandate to investigate the fate and whereabouts of disappeared persons, this theme on the Junglers is to identify and reveal the extent of the extrajudicial killings and other human rights violations of their ruthless group. Eight former Junglers/Patrol Team members confessed to their involvement in murdering more than seventy individuals on the orders of Yahya Jammeh. They also admitted torturing detainees at the NIA and Mile II Prisons.

Reference 44 - 0.04% Coverage

ii. Vocal critics of Jammeh who challenged and condemned his self-perpetuating rhetorics and serious human rights violations. These include the highly respected and renowned veteran journalist Deyda Hydera and Jammeh's own relatives including Haruna Jammeh, Masi Jammeh and Jasaja Kujabi and Lawyer Ousman Sillah.

Reference 45 - 0.03% Coverage

The following witnesses were Junglers who participated in the commission of serious human rights violations and abuses. They gave an account of the history, mindset and mode of operation, command structure and nature of the violations committed by the Junglers. 1.

Reference 46 - 0.02% Coverage

Yahya Jammeh used the Junglers to carry out killings and other serious human rights violations and abuses of his perceived enemies.

Reference 47 - 0.03% Coverage

Based on the overall evidence, the Commission finds Yahya Jammeh, the following Junglers and other persons individually and collectively culpable for crimes of murder, torture and other serious human rights violations listed below:

Reference 48 - 0.01% Coverage

Introduce a mandatory course for all soldiers on human rights and on the role of the military in a democratic society.

Reference 49 - 0.03% Coverage

The PATP cure violated the human rights of PLHIV in The Gambia and those that came from abroad. Their right to health was violated. They were prevented from getting the right medical support that could keep them healthy. The participants were treated in inhumane and degrading manners.

Reference 50 - 0.02% Coverage

Dr Tamsir Mbowe was an accomplice to Yahya Jammeh in the bogus treatment. Dr Tamsir Mbowe endorsed the treatment programme which led to human rights violations and the loss of lives.

Reference 51 - 0.01% Coverage

Conduct training for health workers on human rights and medical ethics in the context of HIV;

Reference 52 - 0.06% Coverage

1) Widespread sexual and gender-based violence (SGBV) characterized Yahya Jammeh's twenty two (22)-year rule as President of The Gambia. Sexual violence was often perpetrated either as the main objective of certain human rights violations or it was used as an instrument of repression, torture and punishment. Across The Gambia, females were disproportionately affected by violations including sexual violence, torture, inhumane and degrading treatment, arbitrary arrests, detention and forced labour.

Reference 53 - 0.06% Coverage

The Gambia is a signatory to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and has committed and is obliged to take concrete steps to eliminate all forms of discrimination against women. Article 1 of CEDAW defines sexual violence as "violence which is directed against a woman because she is a woman or that affects women disproportionately;" sexual violence thus includes gender-based violence and constitutes a human rights violation.

Reference 54 - 0.07% Coverage

The complicity of the government in these crimes explains why during the period under inquiry, there were systematic state policies and agenda to cover up crimes through concealment. Yahya Jammeh secretly carried out these disappearances to silence and neutralise perceived political opponents and critics in order to instill fear in the minds of the people. These abducted or disappeared persons were often killed and buried at Military Barracks or Yahya Jammeh's farms. Such activities were usually carried out at odd hours of the night to minimise discovery of these serious human rights violations.

Reference 55 - 0.02% Coverage

Provide training to the members of the security forces on the relevance of ECOWAS human rights instruments and their applicability.

Reference 56 - 0.07% Coverage

On the basis of the testimonies and evidence received by the Commission, the Commission is satisfied that Yahya Jammeh had complete power and authority in the appointment of individuals to the ad-hoc investigation panels set up to probe the coups. Therefore, since he exercised overall command over both the personnel selection and work of the NIA, Jammeh is responsible for the human rights violations that were committed by the NIA in collaboration with other security institutions, during the panel investigating into the 2006 coup attempt by Ndure Cham.

Reference 57 - 0.04% Coverage

The following present and past NIA officials who directly and indirectly participated in the torture of detainees and other gross human rights violations and abuses must be banned from holding any office with the government of The Gambia for a minimum of ten (10) years which the Commission believes commensurate with the severity of their actions:

Reference 58 - 0.05% Coverage

All NIA staff must undergo adequate and comprehensive training to inculcate the culture of discipline and values that promote respect for fundamental human rights and freedoms and upholding the rule of law in a democratic system. This is integral to any reconstruction efforts to end the culture of impunity that characterised the NIA as an instrument of torture and oppression during Jammeh's twenty two (22) years of dictatorship.

Reference 59 - 0.06% Coverage

The Gambia Prison Services was one of the three institutions that the TRRC investigated to gather information and receive evidence that would inform its recommendations for putting in place appropriate institutional reforms. The Prison Services was identified as an institution that had committed many human rights violations during the period under review (July 1994 to January 2017) and therefore the Commission deemed it necessary to conduct institutional hearings on the Prison Services.

Reference 60 - 0.12% Coverage

The Gambia is a party to the human rights instruments including the (a) the International Covenant on Civil and Political Rights (ICCPR) in 1979 (b) International Covenant on Economic, Social and Cultural Rights (ICESCR) (c) and the Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT) The Basic Principles for the Treatment of Prisoners, adopted and proclaimed by UN General Assembly resolution 45/111 of 14 December 1990, provide under Article 1, that "All prisoners shall be treated with the respect due to their inherent dignity and value as human beings". Article 5 of The Basic Principles holds further that, except for limitations that are made demonstrably necessary by the condition of their imprisonment, all prisoners must be afforded the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights as well as the ICESCR, the ICCPR and other rights found in other United Nations covenants.

Reference 61 - 0.07% Coverage

Instead, it was turned into an oppressive institution characterised by human rights abuses and inhumane degrading treatment of prisoners and even prison officers in some cases. Like all the other state and security institutions, The Gambia's prisons system was used as a tool to facilitate former president Yahya

Jammeh's authoritarian machinations. He used the prisons as a tool for instilling fear and inflicting punishment on those who oppose him or fall out of favour with him. He effectively wielded the threat of sending people to his "five-star

Reference 62 - 0.10% Coverage

Despite the lack of qualification and the fact that he was removed from the position on two occasions and even incarcerated in the Prison that he headed, David Colley was recycled and reinstated and became the longest serving Director General (DG) of The Gambia Prison services. He managed to remain as DG for so long because he carried out Yahya Jammeh's directives to the letter, without questions and simply turned a blind eye to human rights violations that were taking place in the prisons under his watch. To ensure that was able to get what he wanted, Jammeh appointed persons from his ethnic group or close community and group of associates that he believed would be loyal to him to hold leadership positions in the Prison Services. The educational qualification or competence did not matter. All he wanted

Reference 63 - 0.12% Coverage

As a justice sector institution, the prisons and prison administration is governed by both constitutional and statutory law (the Prisons Act) provisions. These laws provide for the manner of deprivation of the liberty of any person in The Gambia. A prisoner to be admitted either on remand or on conviction, cannot be legally admitted unless a remand warrant, warrant or order of detention, warrant of conviction or a committal warrant, or order of a Court Martial is presented. However, the situation changed in 1994. Many innocent victims including security officers, politicians, business persons, journalists and advocates were detained at Mile II Central Prisons without due process. They were subjected to inhumane and degrading treatment, tortured and some died as a result. The Standard Minimum Rules for the Treatment of Prisoners, developed by the United Nations Commission on Crime Prevention that contained provisions protecting the human rights and personal liberties of detainees were not applied.

Reference 64 - 0.05% Coverage

Besides admitting persons to the prisons without due process and in contravention of the laws governing the prisons, stipulating the times when arrestee can be interned or removed from the prisons, the prison authorities, the NIA and other state institutions and agents also engaged in a number of gross human rights violations in their handling of prisoners. The NIA and Junglers (private torture and assassination squad of Yahya Jammeh comprising

Reference 65 - 0.16% Coverage

In contravention of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) which states that: "all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification. The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times", the Commission received evidence that prisoners and detainees were beaten and tortured inside and outside the confines of the prison. Several witnesses testified that David Colley, the Director was aware of the beatings and torture and did nothing to stop them. In addition the Prison authorities turned a blind eye to or participated in the activities of the Junta members and NIA in Mile II Prison. These include the mock executions of the Security Detainees on the 6th September 1994. The torture of Sanna B. Sabally and Sadibou Hydara on January 29, 1995 and the removal of prisoners such as Pierre Mendy and

others and being taken to the NIA for torture sessions shows the complicity of the prison hierarchy in the perpetration of serious human rights violations. Prison officers such as Bakary Tamba were also taken to the NIA to be tortured.

Reference 66 - 0.04% Coverage

Between 1994 to 2016 a special category of prisoners not recognized by law under the classification "detainees" were kept at security wing of the Mile II Prisons pursuant to executive directives and on orders of the former President, Yahya Jammeh. They were subjected to all forms of ill-treatment, abuse and stripped of all their fundamental human rights.

Reference 67 - 0.03% Coverage

To repeal and replace the existing archaic prison laws with more human rights oriented and progressive laws that meet the requirements of a modern democratic society and the United Nations Standard Minimum Rules for the treatment of Prisoners.

Reference 68 - 0.08% Coverage

In dealing with the human rights violations of April 10th and 11th 2000, the National Assembly and then President directed the amendment the Indemnity Act of 1982. This amendment extended the application of the Act to the security and public officers who were responsible for the deaths, torture, physical and sexual abuse of the students during the demonstration. The effect of this law is intended to shield the President and his subordinates from responsibility for these massive human rights violations. These indemnity laws are not permissible in a democratic society as they are contrary to customary international law.

Reference 69 - 0.07% Coverage

Former President Yahya Jammeh saw The Gambia Bar Association (GBA) as a threat to his plans to entrench himself in power. Consequently, he tried to weaken the Association by encouraging the setting up of a rival group. This interference rendered both groups less effective in their efforts to hold the government accountable to upholding human rights and freedoms and respect for the rule of law. He also targeted individual lawyers who he believed were working against his interests and subjected them to gross human rights violations.

Reference 70 - 0.06% Coverage

That during the 22 years of the Jammeh regime, Human Rights Defenders, journalists and media practitioners were targeted, arrested, detained for long periods without access to lawyers or the courts and subjected to gross human rights violations to the extent some of them left the country for fear of further/being persecuted. The Gambia was not fulfilling its Universal Periodic Review obligations during this time and Special Rapporteurs were denied access to the Mile II Prisons.

Reference 71 - 0.05% Coverage

Reparations to victims is a key element of the Gambian Transitional Justice Process. The right to reparations for victims of gross violations of human rights is well founded in the 2017 TRRC Act taking cue

from the AU Transitional Justice Policy and from international law. Those who have suffered human rights violations deserve acknowledgement of these violations and appropriate action taken to provide redress.

Reference 72 - 0.04% Coverage

International IDEA (AWA IDEA), the Office of the High Commissioner for Human Rights (OHCHR) and the United Nations Development Programme – The Gambia, the Institute for Integrated Transitions (IFIT) and International Centre for Transitional Justice (ICTJ) and the Ministry of Justice of The Gambia.

Reference 73 - 0.03% Coverage

The TRRC received over 1500 statements out of which only 1009 were eligible for victim status under the mandate of the TRRC. The right to reparations for victims of gross violations of human rights and abuses is well founded in TRRC Act, 2017. Section 20 (2) of

Reference 74 - 0.06% Coverage

the Act requires the Commission to grant reparations to victims, and to issue regulations in furtherance of this objective. Those who have suffered human rights violations deserve acknowledgement of these violations and appropriate action taken to provide redress. To this end and acting in accordance with their mandate, the TRRC developed a Policy on Reparations and the Reparations Regulations which were Gazetted by the Ministry of Justice in February 2021.

Reference 75 - 0.10% Coverage

In discharging its responsibility to grant reparations to victims and to respond to the needs of the victims of gross human rights violations and abuses the Government on October 8, 2019, gave the TRRC D50 000 000 for reparations with a promise to give an additional D50 000 000. Out of the D50 000 000 that was given, the Commission paid approximately D13 000 000 for urgent interim reparations in medical assistance for the victims who needed urgent medical attention. In a decision made by the Commission on June 28, 2021 the balance of the D50 000 000 was allocated to 955 (nine hundred and fifty) victims or their families. This was not enough to meet the total monies to be granted to victims as final compensation based on guidelines developed by the Commission for the granting of reparations to victims.

Reference 76 - 0.10% Coverage

Apart from the political divide in The Gambia a consultative research conducted by the Reconciliation Unit of the TRRC and the Conflict Development Analysis conducted by WANEP in 2019, revealed that The Gambia is deeply polarized and requires collective actions for peace and stability. These divisions include ethnic, religious, gender and wealth divides. It can be argued that inclusiveness and equality are at the heart of our national reconstruction process. For the country to move from the atrocities of human rights violations of the past twenty two years (1994-2017) people need to adopt a culture of tolerance, forgiveness and healing. The key stakeholders for this process include the National Human Rights Commission, religious and traditional leaders, youth and women groups, educational institutions, NGOs/CSOs, the media and victims organisations.

Reference 77 - 0.14% Coverage

Partnership are important for reconciliation. To ensure continuity of the TRRC's post agenda work "on social cohesion, peace and reconciliation to address polarisation and grievances amongst the people of The Gambia," the TRRC with the support of the UN Transitional Justice Project in The Gambia facilitated the signing of a memorandum of understanding with the following institutions so that they continue the process of reconciliation post TRRC. The signing of the MoU between the Women Affairs Unit of the TRRC with ten Women Civil Society Organizations in The Gambia is an important contribution to the post TRRC agenda on reconciliation. The MoU dated July 13, 2020 is signed by the following organisations: Think Young Women, Network Against Gender Based Violence, Women In Liberation and Leadership (WILLS), West Africa Network for Peace building- The Gambia (WANEP), The Girls' Agenda, Gambia Federation for the Disabled, Forum for African Women Educationist Gambia, (FAWEGAM), Female Lawyers' Association Gambia (FLAG), Women's Association for Victims Empowerment (WAVE) and Gambia Centre for Victims of Human Rights Violations.

Reference 78 - 0.03% Coverage

Lustration can be an alternative or supplement to retributive justice by disqualifying agents/ officials of the former regime responsible for the human rights violations by excluding them from public service and disqualifying them from holding political office.

Reference 79 - 0.07% Coverage

It is provided in Section 19 of the TRRC Act, 2017 that the Commission may recommend the granting of amnesty under the terms and conditions established by the Commission on the application by a person who makes a full disclosure of his or her involvement in human rights violations or abuses and expresses remorse for their acts or conduct. The Act further provides that where the Commission has refused an application for amnesty, it shall as soon as reasonably practicable give reasons for its refusal in writing to the applicant and to any other person who in relation to the offence is a victim.

Reference 80 - 0.16% Coverage

During its tenure the TRRC was unable to fulfill this very important component of its mandate. Plans to rename Arch 22 Memory Arch did not materialise. From a historical, socio-cultural, educational and locational perspective, no site or space can be a better location for a memorial dedicated to the victims of the violations and abuses and human rights during the Jammeh era than the Arch 22 space. The Arch is located strategically at the entrance of the Gambian capital and is visible to all persons entering and leaving the city. It is also a popular site for tourists and schools and lends itself easily to keeping the memory regarding the victimisation of Gambians and other nationals alive.

Renaming Arch 22 is intended to honour all victims of human rights abuses and to serve as a constant reminder to all persons passing under the Arch of the gross human rights violations that occurred in the country and motivate them to commit to non-recurrence. By renaming the arch and using its spaces to exhibit and commemorate events that happened, the victims will be recognized, their suffering acknowledged, their stories retold and the wider public and future generations will be sensitized and educated about the violations that occurred in the country in the 22 (twenty two) years under Jammeh.

Reference 81 - 0.21% Coverage

STATEMENT AND RECOMMENDATION ON THE NATIONAL HUMAN RIGHTS COMMISSION (NHRC)

In December 2017, the Gambia Government passed a series of laws setting up a Constitutional Review Commission (CRC), a Truth, Reconciliation and Reparations Commission (TRRC) as well as a National Human Rights Commission (NHRC). These instruments and institutions interlinked form the broader framework of the Transitional Justice Process intended to enable the country to transition from the Jammeh dictatorship – during which Gambians suffered gross violations of human rights to a democratic dispensation.

The TRRC had a limited time span to carry out its mandate of investigating and establishing an impartial historical record of the nature, causes and extent of violations and abuses of human rights committed during the period of July 1994 to January 2017 and to consider the granting of reparations to victims and for connected matters. The NHRC however is a permanent independent body with mandate to promote and protect human rights and fundamental freedoms in The Gambia, investigate human rights violations and provide redress and remedial actions to victims.

From the mandates of both the TRRC and the NHRC, it seems logical to assume that the NHRC, is the natural body to monitor implementation of the TRRC recommendations to ensure that Never Again in the history of The Gambia will such human rights violations and abuses occur.

The NHRC's promotion and protection mandate (Section 12 of the NHRC Act 2017) includes monitoring, receiving, investigating and considering human rights violations in The Gambia as well as assisting the Government in formulating appropriate policies with respect to human rights

Reference 82 - 0.03% Coverage

That the NHRC be responsible for the archiving and digitalisation of documents, information and materials emanating from the TRRC to help in the preservation of the impartial historical record of human rights violation that the TRRC was mandated to establish.

Gambia - TRRC Compendium Part B Final> - § 14 references coded [1.40% Coverage]

Reference 1 - 0.11% Coverage

Under Sir Dawda Jawara's leadership, The Gambia was known for its impressive human rights record and had the reputation of being the human rights capital of Africa. The Gambia is host of the Secretariat of the African Commission on Human and People's Rights and whom of the the African Charter on Human and People's Rights known as the "Banjul Declaration" which was adopted and submitted to the Organisation of African Unity and finally adopted on June 28, 1981. In this context, the African Centre for Democracy and Human Rights Studies is hosted in The Gambia.

Reference 2 - 0.10% Coverage

Between July 1994 and December, Yahya Jammeh and his co-perpetrators named herein committed serious crimes and human rights violations against the people and residents of The Gambia. These include the unlawful killing of between two hundred and fourteen to two hundred and fifty (214-250) people, arbitrary arrests and unlawful detentions/imprisonment of hundreds of people, rape and sexual violence against men and women, inhumane and degrading treatment and torture of hundreds of victims.

Reference 3 - 0.08% Coverage

The new government of The Gambia established the Truth Reconciliation and Reparations Commission ("TRRC") to investigate and establish the truth about the human rights violations that took place during Yahya Jammeh's 22-year regime, help bring about healing and reconciliation and to make recommendations for prosecution of those who bear the greatest responsibility for the violations committed.¹⁰

Reference 4 - 0.06% Coverage

Prior to the July 22, 1994 coup d'état which the Junta dubbed "the July 22nd revolution", The Gambia enjoyed an unblemished human rights record. In addition to boasting of consistently having one of the best human rights records in Africa, it was the host to important human rights institutions of the African Union.

Reference 5 - 0.12% Coverage

Contrary to its claim of being soldiers with a difference, the Junta started differently by suspending the country's 1970 Constitution. It suspended the country's 1970 constitution and started ruling by decree. Some of these decrees granted the Junta draconian powers. Although, Decree Number One (1) did not suspend human rights provisions of the constitution, it allowed some other decrees for example which ousted the jurisdiction of the courts in certain human rights related issues and also suspended the writ of habeas corpus in the instance of a member of the force being detained and several other remedies.¹⁹

Reference 6 - 0.10% Coverage

Many students also fell victim to the deteriorating human rights record of the regime, in particular the rights violations by the security agents of the state. There were several instances when students were killed and raped. In the year 2000, a Gambian student Ebrima Barry died in the hands of the Fire and

Rescue Service personnel. The students became dissatisfied with the slow pace of the investigations. On April 10 and 11 of 2000, the students protested the killing of Ebrima Barry and the rape of Binta Manneh.³⁸

Reference 7 - 0.14% Coverage

2.45. Widespread and systematic sexual and gender-based violence (SGBV) characterized Yahya Jammeh's 22-year rule as President of The Gambia. Sexual violence was often perpetrated either as the main objective of certain human rights violations or it was used as an instrument of repression, torture and punishment. Some of the more appalling incidents include (i) the sexual violence and abuse of participants of scholarship pageants and "protocol girls"; (ii) rape and/or sexualized torture by state security officials of male and female detainees including political opponents; (iii) violations committed as part of the infamous purge of "witchcraft" and (iv) sexual violence during "the Presidential Treatment Program."

Reference 8 - 0.09% Coverage

ethnic, cultural, religious or gender grounds and other inhumane acts reach the threshold of crimes against humanity only if they are part of a widespread or systematic attack against a civilian population with knowledge of the attack. Isolated inhumane acts of this nature may constitute grave infringements of human rights, or depending on the circumstances, war crimes, but may fall short of falling into the category of crimes against humanity.

Reference 9 - 0.24% Coverage

Each of these states whose citizens were killed in The Gambia would also have jurisdiction under their domestic laws to prosecute Yahya Jammeh for those crimes committed against their citizens in The Gambia. Whilst The Gambia can prosecute Yahya Jammeh for all the crimes committed in her territory, Ghana for instance will also have jurisdiction to prosecute him for the unlawful killings of approximately forty-four (44) Ghanaians who were killed by Yahya Jammeh's killer squad the Junglers in The Gambia. Similarly, Togo also has jurisdiction to prosecute Yahya Jammeh for the killing in The Gambia of two of its citizens. A prosecution by each state of the violations against its citizens in The Gambia would lead to a fragmented approach to the prosecution of the serious violations of human rights and grievous crimes that were committed by Yahya Jammeh and his co-perpetrators over a period of 22 years while in power in The Gambia. Additionally, these crimes taken by themselves may not meet the threshold of crimes against humanity and would instead amount to penal code offences such as murder. It would not be surprising if some countries would not be interested in prosecuting the violations against their citizens in The Gambia

Reference 10 - 0.10% Coverage

From this time onwards, Yahya Jammeh begun his strategy of persecuting journalists and operators of media houses who he perceived to be against his rule. From 1994 to December 2016, first, as Chairman of the AFRIC and then as President of the Republic of The Gambia Yayha Jammeh persecuted Gambian journalists and severely violated their human rights. During his rule, The Gambia was consistently ranked as one of the worst places for journalists ranking only above Eritrea and Equatorial Guinea.

Reference 11 - 0.09% Coverage

The twenty two (22) years of Yahya Jammeh's dictatorial rule was characterised by heinous human rights violations ranging from enforced disappearances, torture, unlawful killings, arbitrary arrests and detentions. These were systemically carried out by the state security apparatus such as NIA, police and the military, pursuant to a state orchestrated policy, to deliberately silence any form of opposition and threat to Yahya Jammeh's reign.

Reference 12 - 0.07% Coverage

Amnesty International, Amnesty International Report 2009 – The State of The World's Human Rights, 28 May 2009, p. 150; The Standard, « Jungler says he will testify against Jammeh even at ICC », 9 February 2018. The article is accessible here: <http://standard.gm/site/2018/02/09/jungler-says-will-testify-jammeh-even-icc/> (last time accessed on 20.03.2018).

Reference 13 - 0.05% Coverage

Human Rights Watch, State of fear: Arbitrary arrests, torture and killings, 16 September 2015, p. 27. Testimony of Omar Jallow (Oya) of 24th of July 2019 lines 908-924 Testimony of Omar Jallow (Oya) of 24th of July 2019 lines 926-956

Reference 14 - 0.07% Coverage

The PATP cure violated the human rights of people living with HIV/AIDS in The Gambia and those that came from abroad. Their right to health was violated. They were prevented from getting the right medical support that could keep them healthy. In addition, the participants in the PATP were treated in an inhumane and degrading manner.

Reference 1 - 0.03% Coverage

1.1.1 Both international and domestic law oblige governments to protect their citizens from human rights violations and abuses, and to provide redress for those who suffer such violations and abuses.

Governments also have a duty to combat impunity by, among other measures, imposing sanctions against those who infringe the fundamental human rights of others, and eradicating the conditions that enable and produce the violations and abuses.

1.1.2 Throughout the contemporary world, Truth and Reconciliation Commissions (TRCs) have emerged as a critical part of the responses of states, especially those undergoing political transition, to serious acts of human rights violations and impunity occasioned by a history of prolonged conflicts and antagonisms. TRCs are official bodies established to investigate and document past human rights abuses and violations of international humanitarian law, and to chart a path for achieving healing, peace and national reconciliation.

1.1.3 Since the attainment of political Independence from British rule on 6th March, 1957, Ghana has experienced four successful military coups d'état and numerous attempted coups. All these events have occasioned extensive human rights violations and abuses. The unconstitutional governments resulting from military coups provided a platform for the serious and sustained violation of the rights of many citizens and foreigners resident in Ghana. The fundamental human rights and freedoms of many people were also violated or abused during periods of constitutional rule.

1.1.4 Most of these violations and abuses of human rights and international humanitarian law have not been investigated, officially acknowledged and redressed. As a result, considerable pain, anguish, bitterness and divisions exist in Ghanaian society.

1.1.5 The establishment of the National Reconciliation Commission (the "Commission") came in the wake of Ghana's historic elections of December 2000, which witnessed, for the first time in the country's post-Independence history, a change of constitutionally elected government effected not by violent means but by popular vote. That event was a clear testimony to the strong desire of Ghanaians to live under conditions of democratic accountability and to forge a society firmly grounded in respect for human rights and the rule of law. The consolidation of democracy and the promotion of constitutional rule and

Reference 2 - 0.01% Coverage

a culture of respect for fundamental human rights and freedoms, as enshrined in Chapter Five of the Constitution of Ghana, 1992, demand that Ghana should deal with its history of egregious human rights violations that risk compromising the forward march of democracy and peace in the country. Building a future for Ghana that is united, secure, peaceful and humane also demands providing redress, including healing, for those who were hurt in the past by serious human rights violations and abuses in the nature of killings, abductions, disappearances, torture, detentions, seizure of property and illtreatment. The Commission was seen by the Ghana Parliament as a vehicle to facilitate the attainment of these goals.

Reference 3 - 0.01% Coverage

2. an overview of the activities, methods and values of the Commission; 3. a discussion of the historical context of human rights violations and abuses in Ghana;

4. a summary of the role of several state institutions (such as the security agencies and the judiciary) and civil society organizations (such as the media, religious bodies, chiefs, workers and student movements) in promoting or resisting human rights violations and abuses in Ghana;

Reference 4 - 0.01% Coverage

seek and promote national reconciliation among the people of this country by recommending appropriate redress for persons who have suffered any injury, hurt, damage, grievance or who have in any other manner been adversely affected by violations and abuses of their human rights arising from activities or inactivities of public institutions and persons holding public office.

Reference 5 - 0.01% Coverage

1.2.2 Thus, the work of the Commission is a major development imperative for Ghana, a country engaged in fostering a culture of respect for fundamental human rights and freedoms, the rule of law, the consolidation and enhancement of democracy, and the strengthening of its governance institutions.

Reference 6 - 0.01% Coverage

1.5.1 The President appointed Dr. Kenneth Agyemang Attafuah, the Director of Public Education and Anti-Corruption at the Commission on Human Rights and Administrative Justice, as the Executive Secretary of the Commission.

Reference 7 - 0.01% Coverage

1.6.1 The object of the Commission, as stated in Section 3(1) of Act 611, was to "seek and promote national reconciliation among the people of [Ghana]". This object was to be pursued in respect of human rights violations and abuses that occurred during periods of unconstitutional government, namely: (i)

Reference 8 - 0.01% Coverage

"in respect of any other period between 6th March, 1957 and 6th January, 1993". In practice, the Commission encouraged, received and considered petitions alleging human rights violations and abuses that occurred during both constitutional and unconstitutional governments.

1.6.2 The mandate of the Commission was to help reconcile the people of Ghana by finding out the truth about past human rights violations and abuses and helping the victims of those violations and abuses to deal with their pain, and to move on with their lives. The mandate also included helping the perpetrators of such violations and abuses to come to terms with their past, and seek forgiveness. Section 20(2)(e) and (g) of Act 611 also required the Commission to recommend reforms and measures to prevent and avoid the repetition of such violations and abuses and to promote healing and achieve national reconciliation.

Reference 9 - 0.01% Coverage

establish an accurate, complete and historical record of human rights violations and abuses inflicted on persons by public institutions and holders of public office or persons who claimed to have acted on behalf of the State during periods of unconstitutional government.

1.6.4 Second, the law required the Commission to recommend to the President appropriate measures to assuage the pain of, and make reparation to, those whose human rights were violated or abused during the mandate. The Commission was also required to recommend measures to prevent such occurrences in future.

Reference 10 - 0.01% Coverage

1. investigate violations and abuses of human rights relating to killings, abductions, disappearances, detentions, torture, ill-treatment and seizure of properties suffered by any person within the specified periods;

Reference 11 - 0.01% Coverage

b) giving prospective petitioners an opportunity to make a statement outlining the substance of their claims of human rights violation or abuse;

Reference 12 - 0.01% Coverage

1. establish accurate, complete and historical record of violations and abuses of human rights inflicted on persons by public institutions and holders of public office or persons who claimed to have acted on behalf of the state during periods of unconstitutional government;

2. recommend appropriate redress for persons who had suffered any injury, hurt, damage, grievance or who had in any other manner been adversely affected by violations and abuses of their human rights; and

Reference 13 - 0.01% Coverage

2.3.1 The Commission regarded the obligation to establish an “accurate, complete and historical record of violations and abuses of human rights” as the cornerstone of its mandate. Fulfilling this obligation demanded that the Commission should be fair and thorough in its statement-taking, investigations and hearings.

Reference 14 - 0.01% Coverage

2.3.3.1.1 The Commission was specifically required by Act 611 to investigate violations and abuses of human rights relating to “killings, abductions, disappearances, detentions, torture, ill-treatment and seizure of properties” suffered by any person at the hands of

Reference 15 - 0.01% Coverage

2.3.3.1.2 The Act also gave the Commission the discretionary power to investigate and make appropriate recommendations in respect of any petition alleging similar human rights violations, but which allegedly took place during periods of constitutional rule between 6th March, 1957 and 6th January, 1993. In exercise of this discretionary power, the Commission decided that, to further its aims of national reconciliation, it would not make any distinction between petitions alleging human rights violations during periods of constitutional and unconstitutional rule. It accepted complaints relating to the entire mandate period without the need for any special application by petitioners.

Reference 16 - 0.01% Coverage

2.3.3.2.1 The Commission gave a broad and liberal interpretation to each of the categories of violations and abuses specified in section 4(a) of Act 611. Thus, it was able to receive, investigate and hear petitions alleging human rights violations and abuses founded on subjection to mock executions and forced cannibalism as instances of torture, while under the rubric of ill-treatment, it accepted and processed

complaints ranging from dehumanizing treatment to administrative injustice that rose to the level, or met the threshold, of human rights violations. In construing the meaning of the specified violations and abuses, the Commission relied on international human rights law and humanitarian law principles, as well as common law understanding of the specified violations.

Reference 17 - 0.01% Coverage

2.3.3.3.1 Section 4(b) of the Act also charged the Commission to investigate the context, causes and circumstances of the violations and abuses. This meant that the Commission was required to undertake comprehensive investigations that would enable it to uncover the conjunction of factors that underpinned, enabled and accounted for the specified forms of human rights violations and abuses during the relevant historical periods. Thus, the Commission was duty bound to explore and identify the root causes, broad sociopolitical environment, surrounding circumstances and the precipitating factors, if any, of the violations brought to its attention.

Reference 18 - 0.01% Coverage

1. undertaking public education and sensitization activities in English and in various local languages throughout the country, on the mandate of the Commission, and emphasising the need for all victims of the specified forms of human rights violations and abuses during the relevant periods to come to the Commission and make a statement/petition;
2. inviting, through various media of public education and sensitization – both locally and internationally – all persons with knowledge of human rights

Reference 19 - 0.01% Coverage

2.3.3.6.1 The Commission was obliged under Section 4(d) of Act 611 to determine whether a human rights violation or abuse was deliberately planned. Where an allegation of human rights violation or abuse was made against any individual, the Commission had a duty to invite the alleged perpetrator or respondent to respond in writing to the allegation. Where the petitioner subsequently testified before the Commission, the Commission was duty bound to give the alleged perpetrator an opportunity to be present at the hearing, provided they had previously submitted a written statement in response to

Reference 20 - 0.03% Coverage

2.3.3.6.2 In establishing the truth or otherwise of an allegation, the Commission applied the civil standard of proof on a “balance of probabilities”, as opposed to the criminal standard of proof beyond reasonable doubt. This was in consonance with the universally established principle in human rights investigations by quasi-judicial investigative bodies. Where, after considering all the evidence before it, the Commission found it more probable than not that the petition was justified, it was required under section 4(c) of the Act to “make appropriate recommendations for redress”. Section 20(d) also imposed a similar obligation on the Commission, in such a situation, to recommend an “appropriate response to the specific needs of [that] victim or group of victims”. Conversely, where the Commission was persuaded on the above basis that events did not occur as alleged, it was bound to find that the petition was not justified and therefore, to dismiss it.

2.3.3.6.3 Where the Commission, using the above-stated civil standard of proof, found that a human rights violation or abuse had occurred, it had a duty under section 4(d) of the Act to proceed to another level of

enquiry, namely, to establish whether or not the violation or abuse was the result of deliberate planning and execution, or a chance occurrence.

2.3.3.6.4 To achieve this end, the Commission, in addition to resorting to traditional investigative techniques, established six special committees of the Commission to examine the role, if any, played by various institutions of state and civil society groups in human rights violations². The Committees invited several key actors during the relevant periods, or persons who were closely acquainted with the workings of the relevant bodies, as well as experts, to testify before it or to submit memoranda as might be appropriate. The findings and recommendations of these special committees, appear in Volume Four of the Report.

2.3.3.6.5 In the Commission's view, the articulation of this obligation in the statute highlighted Parliament's conviction that particularly intentional, as opposed to accidental or systemic, acts of human rights violations and abuses must be singled out for special attention, condemnation and prevention.

Reference 21 - 0.01% Coverage

2.3.3.7.3 The families of the six had alleged that their executed loved ones were subjected to severe forms of torture during their arrest, interrogation, trial and incarceration for treason, contrary to established human rights standards and norms, including principles for the treatment of detained persons.

Reference 22 - 0.01% Coverage

2.5.2.1 The Commission started taking statements of alleged human rights violations and abuses from the public on 3rd September, 2002. By the end of the statement-taking process, it had received 4,240 petitions from individuals all over the country and abroad.

Reference 23 - 0.01% Coverage

4 While the Commission considered none of the human rights violations and abuses specified in section 4(a) of Act 611 as trivial, it took the view that killings constituted the ultimate human rights violation to be rated as more severe because of its finality, among other reasons, than some instances of ill-treatment such as delayed payment of pension or retirement benefits that caused suffering. Similarly, the Commission regarded torture as more egregious than wrongful dismissal. Therefore, all things being equal, the Commission gave killings and torture a higher priority in the scheduling of petitions for hearing.

Reference 24 - 0.01% Coverage

examine the role, if any, played by a number of key state institutions and civil society groups in human rights violations, as well as their potential role in preventing such

Reference 25 - 0.01% Coverage

3.0.1 The events leading to the Gold Coast becoming the Independent State of Ghana on 6th March, 1957 have had a great impact on the course of the country's history and on its human rights record. Political and ideological tensions, as well as economic and social problems, that had either been ignored or poorly addressed in the Gold Coast continued to impinge on, and define, the character of the independent state of Ghana.

Reference 26 - 0.01% Coverage

3.1.6 These legacies of the pre-independence period have significantly affected the course of Ghana's development in all spheres of life, including, most especially, its governance and human rights record.

Reference 27 - 0.02% Coverage

4.0.1 In documenting the human rights violations and abuses that occurred during the Commission's mandate period, it is pertinent to consider the factors that enabled the perpetration of such human rights violations and abuses. The state, through its institutions of governance and social control, are the prime protectors of fundamental human rights of the citizenry. Because state security agencies and judicial institutions wield coercive power and can, therefore, more readily violate or abuse the rights of the individual, sometimes with impunity, they have a corresponding duty of care and circumspection. Similarly, the vigilance and voices of protest of civil society groups are crucial to the promotion and protection of human rights. The docility of civil society can encourage, or even foster, human rights violations and abuses. In short, the activities or inactivities of different sectors of civil society, such as the media, the legal profession (excluding the judiciary), professional bodies, traditional and religious authorities, and workers, youth and students movements, can have a positive or adverse impact on a country's human rights record, and, thereby promote or resist rights violations and abuses.

For these reasons, the Commission established a number of institutional or thematic committees to determine whether or not there was tacit complicity in, or active resistance to, the human rights violations that occurred by various organs of state or by identifiable civil society groups during the mandate period.

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Reference 28 - 0.01% Coverage

1 Volume 4 of this Report contains a more detailed discussion of the role of these organs of state and civil society groups in promoting or resisting human rights violations during the mandate period.

Reference 29 - 0.01% Coverage

4.1.1.0 HUMAN RIGHTS ABUSES DURING THE 1st REPUBLIC

Reference 30 - 0.01% Coverage

4.1.2 REACTIONS TO THE HUMAN RIGHTS ABUSES

Reference 31 - 0.01% Coverage

4.1.2.1.1 As regards the issue of complicity in, or resistance to, human rights violations and abuses by the security services during the Nkrumah era, it is fair to say that the military devoted themselves to the defence of the country against internal and external aggression, and the provision of relief services in cases of emergency. Soldiers kept to

Reference 32 - 0.01% Coverage

the barracks, did not have much to do with the civilian population, and, for all practical purposes, were passive observers of the human rights violations and abuses inflicted on the citizenry as a result of the Preventive Detention Act (PDA), until they took up arms and overthrew the Nkrumah government in 1966.

Reference 33 - 0.01% Coverage

4.1.2.1.3 By their actions, the police confirmed, in the minds of the public, the view that they were agents of the government for suppressing the populace and violating their human rights.

Reference 34 - 0.01% Coverage

4.1.2.1.5 In the early years of post-Independence Ghana, the Special Branch became a tool for fishing out persons perceived to be threats to the personal security of Dr. Nkrumah. In the process, many people's human rights were trampled upon, as they were arrested and jailed without trial on the basis of false accusations made against them to the Special Branch by informants and "intelligence fabricators" – people who made false reports in order to curry favour with those in authority, or in order to settle personal scores.

Reference 35 - 0.01% Coverage

4.1.2.1.6 At the time of Independence, the main infrastructure for incarceration were the forts and castles, which were primarily designed as 'transit quarters' for slaves waiting to be taken across the Atlantic Ocean to the New World. The Prison Service and its staff have since Independence acquired the unenviable reputation as primary human rights violators and abusers, during both periods of constitutional and unconstitutional rule. This is not surprising, given the deplorable conditions in the forts and castles which

Reference 36 - 0.01% Coverage

served as prisons, and the poor training afforded the personnel, which did not include sensitization on human rights issues.

4.1.2.1.7 During the era of the CPP government, large numbers of members of the opposition parties, who were imprisoned under the PDA, suffered severe human rights violations and abuses in the prisons. To start with, the detainees had been deprived of their freedom for up to five years. (This period was extended by another five years when the first batch of detainees had completed the five years imprisonment, and were looking forward to their release). They had been deprived of their rights to seek the protection of the courts against arbitrary Executive action. In addition, they suffered various kinds of deprivation at the hands of the Prison Officers in whose care they had been placed.

Reference 37 - 0.01% Coverage

4.1.2.2.3 The dismissal of the Chief Justice and his forced retirement was a violation of his human rights. It may also be said that the dismissal of the Chief Justice undermined

Reference 38 - 0.01% Coverage

4.1.2.3.5 This account of trade unionism during Nkrumah's CPP government clearly shows that the leadership of the Labour Movement at the time was an accomplice to the human rights violations and abuses that the Nkrumah government inflicted on the citizenry.

Reference 39 - 0.01% Coverage

government, or to perpetrate other human rights violations and abuses against the citizenry.

Reference 40 - 0.01% Coverage

4.1.2.5.1 In general, it may be said that there are three major religious groups in Ghana. These are Traditional Religions, Islam and Christianity. The role, if any, of these religious groups as regards their complicity in, or resistance to, human rights abuses and violations during the mandate period will be examined for each group in turn.

Reference 41 - 0.01% Coverage

4.1.2.5.2 Traditional religion, the oldest religion in Ghana, has no organised structure or association. There is no evidence that the group at any time ever criticised or supported human rights violations or abuses by any government during the mandate period.

4.1.2.5.3 However, there is evidence that certain practices of this group constitute human rights violations. These practices are part of the culture of the people, and therefore have been with Ghanaian society from pre-colonial times to the present. In other words, they are not limited to any particular period in the history of the country.

4.1.2.5.4 One such traditional practice, in some parts of the country, is Trokosi, which is the practice of giving up vestal virgins by families as "payment" to shrines for infractions committed by one of its members. This practice is fraught with serious human rights violations, for it involves the incarceration for life and abuse of mostly young females, some as young as eight years. They work on the farms of, and bear children for, the priests of the shrine.

Reference 42 - 0.01% Coverage

4.1.2.5.6 All these are instances where traditional religious groups are known to be perpetrators of human rights violations and abuses.

Reference 43 - 0.01% Coverage

4.1.2.5.10 There is no evidence of complicity in or resistance to human rights violations or abuses during Nkrumah's CPP era by this religious group.

Reference 44 - 0.01% Coverage

4.1.2.5.15 On the whole, the Christian Religious Bodies put up resistance during Nkrumah's Government, to issues they perceived as blasphemous or as an infringement on the human rights of individual citizens.

Reference 45 - 0.01% Coverage

4.2.1.0 HUMAN RIGHTS VIOLATIONS AND ABUSES UNDER THE NLC

Reference 46 - 0.01% Coverage

4.2.1.3 Members of the Presidential Detail Department (PDD) became targets of human rights abuse by the security forces. Some were lined up and executed after they had surrendered to the attacking forces, and others were detained under the Protective Custody Decree.

Reference 47 - 0.01% Coverage

4.2.2.0.1 It was no surprise that Nkrumah's overthrow was met with jubilation, especially as hundreds of detainees, whose relations had lost hope of their ever coming home, were released from prisons throughout the country. The euphoria that pervaded the society at the time clouded people's awareness of the human rights abuses committed by the NLC government. Indeed, the detentions and other violations and abuses suffered by members of the CPP were considered to be deserved retribution, and there were no protests against the NLC government, as documented below.

Reference 48 - 0.01% Coverage

4.2.2.4.1 Following the overthrow of President Nkrumah's Government, the Christian Council held a non-denominational service at the Accra Sports Stadium to thank God for liberating the country from the one-party rule of the CPP government. This show of support for the NLC and the general anti-CPP government feeling that pervaded the country seemed to have blinded even the religious bodies, both Muslim and Christian, to the human rights abuses against CPP functionaries, the PDD or the violent suppression of the Prestea mine workers' protests.

Reference 49 - 0.01% Coverage

4.2.2.6.3 However, the LSNA's strong opposition to the CPP compromised its ability to protest against the arrests, detentions, confiscation of properties and other human rights abuses meted out to CPP leaders and functionaries. These were seen as deserved punishment. 4.2.2.6.4 Indeed, some of its members presented papers at the series of lectures under the theme "What Went Wrong", at which analyses of the oppressive misrule and mismanagement of the economy by the CPP Government were presented.

Reference 50 - 0.01% Coverage

4.2.2.7.2 Student leaders who had been detained under PDA were released by the NLC, and like many other members of Ghanaian society, students felt that the detention and other human rights abuses meted out to CPP functionaries were deserved retribution, and therefore did not protest against them.

Reference 51 - 0.01% Coverage

4.3.1 HUMAN RIGHTS ABUSES UNDER THE 2ND REPUBLIC

Reference 52 - 0.01% Coverage

4.4.1 HUMAN RIGHTS ABUSES AND OTHER ACTS THAT CAUSED DISAFFECTION TOWARDS THE NRC/SMC I & II

Reference 53 - 0.01% Coverage

legal instruments that legitimized the seizure of power by the Military, as well as other decrees that prevented the general population from enjoying their fundamental human rights and freedoms. For example, under the Subversion Decree, 1972 (NRCD 90), the Military Tribunal was subject to the supervisory jurisdiction of the High Court. Some nine persons were convicted by the Tribunal for conspiring to commit subversion and this was confirmed by the High Court. When two of them filed an appeal against the detention on 23rd July, 1973, the NRC passed the Subversion (Amendment) (No. 2) Decree, 1973 (NRCD 91) on 24th July, amending the original decree. This amendment ousted the jurisdiction of the courts to exercise supervision over the Military Tribunal.

4.4.2.1.6 Again, as had happened during the government of the NLC, the President of the GBA (Ghana Bar Association), E.N. Moore, became the Attorney-General, thus limiting the Association's capacity to be critical of the detentions and other human rights abuses suffered by functionaries of the ousted government.

Reference 54 - 0.01% Coverage

4.4.2.4.1 The NRC facilitated the formation of the Ghana Muslim Representative Council (GMRC), which became the mouthpiece of Muslims on national issues. The Council campaigned for the adoption of the Union Government concept, claiming that Party Politics had sown seeds of dissent among sections of the population, and that the Unigov concept was in line with the basic principles of Islam that all men are equal and united. Having openly declared their support for Unigov, the Muslim groups were not in a position to criticise the human rights violations and abuses unleashed on the citizenry during the campaign for the referendum on Unigov.

Reference 55 - 0.01% Coverage

4.4.2.5.2 As wanton arrests and beatings of opponents of the Unigov concept persisted during the campaign for the referendum on Unigov, the two Orthodox Christian bodies, wrote a joint pastoral letter to the government. They protested against the human rights violations and abuses, and, in particular, the severe beating of the Headmaster, the Assistant Headmaster and students of Opoku Ware Secondary School, Kumasi the beating up of the students of Mfantshipim School, Cape Coast, the arbitrary arrest and detention of K. Addai-Mensah, National Secretary of the Ghana Bar Association the use of the law-enforcement agencies to molest people and the denial of freedom of speech and of association to civil society organisations such as the PMFJ and to the general population.

Reference 56 - 0.01% Coverage

regime, but also intimidate and vilify the regime's opponents, such as the professionals, projecting them as enemies of the ordinary people, and therefore not deserving of public sympathy when they suffered human rights abuses.

Reference 57 - 0.01% Coverage

4.5.1 HUMAN RIGHTS VIOLATIONS UNDER THE AFRC

Human Rights Violations Against The Military 4.5.1.1 Officers above the rank of Major or its equivalent were arrested, beaten up and detained in guardrooms. The AFRC proceeded to deal ruthlessly with the previous military rulers as well as those who had taken up civilian political appointments. On Saturday, 16th June 1979, Gen. Acheampong and Maj-Gen Utuka, former Commander of the Border Guards, were

executed by firing squad. Again on Tuesday, 26th June, six Senior Officers, including two former Heads of State, Gen. Akuffo and Lt-Gen Afrifa,

Reference 58 - 0.01% Coverage

✓✓... ✓✓... ✓... ✓... ✓... > ^v< ✓... ✓... > Human Rights Violations Against Civilians

Reference 59 - 0.01% Coverage

4.5.2.1.3 With the President of the GBA so closely associated with the abuses perpetrated by the AFRC, the GBA was not known to have protested against the human rights violations and abuses suffered under the AFRC. Subsequently, W. AdumoahBossman was ousted from office later that year largely on account of his participation in the work of the AFRC.

Reference 60 - 0.01% Coverage

4.5.2.3.4 During this period, the newspapers gleefully endorsed and gave vivid accounts of the gross human rights abuses that occurred. Apart from the executions, there were the public flogging, especially, of market women, some stripped naked, as well as contractors and other people accused of kalabule. Some of these reports were accompanied by pictures.

4.5.2.3.5 Special mention must be made of the bold stand of state-media journalists like Elizabeth Ohene and Adjoa Yeboah-Afari who, respectively, wrote editorials and articles condemning the executions and the other human rights abuses.

Reference 61 - 0.02% Coverage

4.5.2.6.1 When the AFRC took over power on 4th June, 1979, the process for returning the country to civilian constitutional rule had already begun. The country's politicians and members of the ARPB and PMFJ, who had so actively campaigned against the SMC's Unigov concept, were very relieved when the AFRC assured the nation that they would honour the arrangements already put in place for a return to constitutional rule. Consequently, there were no protests from these groups against the execution of the eight Senior Military Officers without trial, nor the many atrocities committed against the citizenry in the name of the "house cleaning" exercise that the AFRC announced was its objective in seizing power. Even when the leaders of political parties met the AFRC, the main concern was to secure an assurance from the AFRC that they would continue with the transitional programme to democratic rule. Nothing was said about the executions, the seizure of assets, the demolition of houses, the public flogging of traders and other human rights violations meted out to people suspected of economic sabotage.

4.5.2.6.2 Considering the extent of the atrocities that took place during the short life of the AFRC, the absence of public condemnation of these atrocities and, therefore, quiet acceptance of such human rights abuses, was a clear indication of the general lack of awareness or concern about human rights among even the elite of the society-a clear illustration of the absence of a human rights culture in Ghanaian society.

Reference 62 - 0.01% Coverage

refused to appear before the public tribunals. Some of the members, however, defied the ban and practiced law before the tribunals. The tribunals often passed unreasonably long terms of imprisonment, hence contributing to the human rights violations and abuses of those who appeared before them.

Reference 69 - 0.01% Coverage

4.7.2.1.12 Some individual lawyers, offered free legal services to detainees and other persons suffering human rights abuses under the PNDC, at great risk to themselves.

Reference 70 - 0.01% Coverage

4.7.2.3.3 There is therefore no evidence of chiefs speaking out against the killings, disappearances, seizure of private property, harassment of citizens, wrongful dismissal of hundreds of workers, the kidnapping and murder of the three High Court Judges and the retired army officer and other human rights violations that took place during the PNDC era.

Reference 71 - 0.01% Coverage

Organizations. As in previous regimes, the Muslim religious groups were more concerned with issues of Muslim unity, than with human rights issues.

Reference 72 - 0.01% Coverage

4.7.2.4.6 In 1989, the government sought to control Religious Bodies by requiring that they should all be registered under the Religious Bodies Registration Law, 1989, (PNDC L 221). In a joint memorandum dated 11th August, 1989, the Christian Council and the Catholic Bishops' Conference expressed their objection to the law which they felt was an infringement on the fundamental human rights of the freedom of worship. They were concerned that the registration would make it possible for the government to deny legal existence to some Religious Groups. Indeed, the Jehovah's Witnesses; the Church of Jesus Christ of Latter Day Saints; the 'Lord is My Shepherd Church' in Kumasi; and Prophet Ekwam's Church at Gomua Buduburam were banned. However, the other religious bodies did not protest on their behalf.

Reference 73 - 0.01% Coverage

4.7.2.5.5 The private press in particular came under constant harassment, as they dared to criticize the government for the various human rights violations and abuses that occurred during this period. In July 1982, angry workers attacked the offices of Echo and

Reference 74 - 0.01% Coverage

4.7.2.6.1 The lack of a human rights culture in Ghanaian society that had been noted elsewhere, was poignantly clear during the PNDC era. People were assaulted, maimed,

Reference 75 - 0.01% Coverage

4.7.2.6.2 Indeed it may be fair to say that opposition to the PNDC regime from the GBA and ARPB was driven as much by the demand for a return to constitutional rule as by a commitment to defend human rights.

Reference 76 - 0.02% Coverage

selfishness. This may be stated as: "once the problem or the human rights violation or abuse affects somebody else, and not me, it really is not my business". This kept coming up each time the military took over power, and a new group of people were sent into prison without trial, ostensibly for their own good, as the "Protective Custody" Decrees seemed to imply. Those who had been imprisoned under Dr. Nkrumah's PDA, said they teased the CPP Ministers, Parliamentarians and party functionaries as they were being brought to replace them in the prisons. It is very instructive, for example, that Victor Owusu, who had himself suffered detention without trial under PDA, had, as AttorneyGeneral during the NLC regime, helped in drafting the Protective Custody Decrees passed by the NLC, which sent some people into detention for having jubilated upon hearing of the abortive coup in April, 1967.

4.8.9 The fourth trait of some individual Ghanaians that has allowed the human rights violations and abuses to occur was cowardice. People generally are afraid to confront officialdom on any issue. Most people do not openly criticize governments or people in authority for fear of losing their jobs or being punished. This trait in individuals is bad enough, but when it surfaces in groups, as have been shown in the main sections of this chapter, where accounts of the reaction of various organized bodies have been given, it is only the Ghana Bar Association and, at times, the Religious Bodies, that have raised their voices against human rights and abuses meted out against the people of this country. This is a sad comment on our sensitivity to human rights issues in this country. In this connection, the boldness of the three High Court Judges who were murdered must be highly commended.

Reference 77 - 0.01% Coverage

4.9.19 Again, evidence before the Commission pointed to the fact that most of the victims tried to attribute their sufferings to not belonging to the tribe of the perpetrators of those human rights abuses and violations. It was believed because of their tribal affiliation, such perpetrators did whatever they did with impunity.

Reference 78 - 0.01% Coverage

4.10.1 The evidence from the foregoing analysis of the social context, in which human rights violations and abuses occurred in Ghana during the period from 6th March, 1957, to 6th January, 1993, indicates a painful lack of awareness of human rights values among Ghanaians, both as individuals and as groups.

4.10.1 The social context in which the human rights violations and abuses occurred was,

Reference 79 - 0.01% Coverage

HIGHLIGHTS OF HUMAN RIGHTS VIOLATIONS AND ABUSES DURING THE MANDATE PERIOD

Reference 80 - 0.01% Coverage

5.0.2 The categories of serious human rights violations and abuses the Commission investigated and/or heard concerned:

Reference 81 - 0.02% Coverage

5.2.0.1 Although the overthrow of the Nkrumah government was generally welcomed as rescuing the nation from a suffocating dictatorship, it brought in its train significant human rights abuses. In the course of overthrowing the government, grave human rights violations were committed by the coup-makers, led by Col E.K. Kotoka, Commissioner of Police J.W.K. Harley and Maj A.A. Afrifa, especially against members of Nkrumah's security apparatus in the Presidential Detail Department (PDD), who had offered some resistance. The insurgent soldiers surrounded the block of flats, took the men, such as Ernest Kojo Nyan away, forced women such as Ekuba Eduku and children, at gun point, to leave their homes. Some of these women's husbands had accompanied the President on his trip to Hanoi. The soldiers also shot dead some of the males, including boys, e.g George Bartels then 17 years old. Others were subjected to various forms of cruelty and molestation. They were beaten, made to crawl on their knees and to lie on the ground facing the scorching sun. Some claimed that hot tea were poured into their eyes. These incidents took place even though Kotoka, Harley and Afrifa, leading architects of the coup, were present at Flagstaff House and the Police Headquarters where the prisoners were congregated.

Reference 82 - 0.01% Coverage

HUMAN RIGHTS VIOLATIONS AND ABUSES UNDER THE AFRC

Reference 83 - 0.01% Coverage

5.5.7.1 The experience of Elizabeth Mensah, a dealer in beer and provisions at Esikafo Ambanem, Takoradi, illustrates how indisciplined soldiers used the control of prices and decrees on hoarding as a pretext for stealing and perpetrating human rights violations. This is how she described her ordeal:

Reference 84 - 0.01% Coverage

5.6.0.2 A number of human rights violations and abuses occurred which were mainly perpetrated by the security agencies, notably the Military and the Police.

Reference 85 - 0.01% Coverage

5.7.6.11 By turning a blind eye on the tortures that went on under their very noses, not only Quantson and Nanfuri, but also Dr Koranteng who treated them of their injuries and made no protest, and Agyekum, who tried and convicted them, became accessories to the human rights abuses committed by the PNDC regime.

Reference 86 - 0.02% Coverage

7.2.2 Even though the Act does not mandate the Commission to disburse reparation, having investigated complaints of human rights violations and abuses and having identified victims in accordance with section 4 of Act 611, it is better suited to recommend appropriate reparations for implementation by any body or bodies that would be established in accordance with section 20 (2)(h).

7.2.3 Secondly, Chapter 15 of the Constitution, 1992, entrenches the fundamental rights and freedoms of every person in Ghana and same shall be respected by the State, its agencies as well as individuals. It also provides specifically for circumstances under which victims of human rights violations shall seek redress as well as provisions for the payment of compensation by violators. Reparation for human rights violation is, therefore, a right the individual is entitled to, and not a favour.

7.2.4 Best practices in international law provide another legal basis for the Commission's recommendation on reparation. Within the framework of international human rights, a consensus is evolving regarding the obligation to protect fundamental human rights and freedoms, and the right to seek redress when these rights are violated. A right to seek redress implies a duty to ensure that appropriate steps (including reparation) are taken to address any violation.

7.2.5 Lastly, Ghana is a party to major international treaties that assert the inviolability of fundamental human rights, the same rights that the Commission was set up to investigate. All of these treaties have provisions regarding the right of victims to remedy, such as compensation.

Reference 87 - 0.01% Coverage

The 1992 Constitution entrenches the fundamental rights and freedoms of the individual, which shall be respected by the State, its agencies and individuals and a corresponding right to seek redress when these rights are violated. A principal objective of this reparations policy is to reinforce the citizen's right to redress as well as the responsibility of the State to conduct itself in a manner based on respect for human rights, the rule of law and democratic accountability.

Reference 88 - 0.01% Coverage

Another major objective of the reparations policy is to achieve two forms of recognition: recognition of victimhood and recognition of accountability. The first means acknowledging that the treatment to which the victim was subjected constitutes a serious human rights violation or abuse. The second means that, no matter how long it takes, the State, and for that matter, responsible actors, shall be called upon to account for their acts of commission and omission.

Reference 89 - 0.01% Coverage

Through reparations, the Commission seeks to, somehow alleviate the suffering of victims (direct or indirect) of human rights violations and to help them carry on with their lives.

Reference 90 - 0.01% Coverage

While the award of reparation, by its very nature is backward-looking, it also serves a forward-looking purpose, to the extent that it provides a basis for non-repetition. In that respect it is the objective of the Commission that through the reparations package, the nation will be motivated to resolve that "Never Again" shall the State facilitate or preside over such gross human rights violations.

Reference 91 - 0.01% Coverage

Reparation will be recommended for everyone against whom human rights violations will be established, there will be no distinction between the well-placed in society and the ordinary victim, who is usually voiceless and lacks the means to take on the highlyplaced and powerful in society. One of the objectives of the reparations policy is to underscore respect for all individuals, irrespective of their social or economic status.

Reference 92 - 0.01% Coverage

In making its recommendations for reparation, the Commission is striving to achieve a balance between the need to redress human rights violations and the resource constraints

Reference 93 - 0.01% Coverage

✓Letters of apology signed by the President, couched to reflect the category of violation suffered by specific victims of egregious human rights violations.

Reference 94 - 0.01% Coverage

✓A national monument in Accra, in honour of the killed, disappeared (all those who lost their lives as a result of human rights violation) and to the unknown victim of human rights abuse during the Commission's mandate period. On the monument shall be engraved the names of the victims who fall in this category, such as the Generals, the three High Court Judges and retired Army Officer, those executed after sham trials fraught with severe torture and serious procedural irregularities and the unknown victims.

Reference 95 - 0.01% Coverage

✓Annual Reconciliation Lectures to foster respect for human rights, rule of law and democratic principles

Reference 96 - 0.01% Coverage

✓Scholarship for one child (in public school up to SSS level) of the following category of victims o Persons who lost their lives as a result of human rights violation o The disappeared o Persons disabled as a result of human rights violation o Traders whose goods were seized

Reference 97 - 0.01% Coverage

7.4.1.6.1 For those living with health problems as a result of human rights violation, the NHIS, which is about to take off, should take care of their concerns.

Reference 98 - 0.01% Coverage

7.4.3.1 This is by no means payment for human rights violations because money, like any other form of compensation, can never restore victims to the status quo ante. Besides, it is impossible to quantify in money or money's worth, losses as well as the physical, emotional, mental and psychological agony that victims and/or families have been through.

Reference 99 - 0.01% Coverage

✓Loss of life resulting from human rights violation – killings disappearance etc. ₵20m – ₵30m

Reference 100 - 0.01% Coverage

7.6 CONCLUSION Implied in any award of reparation, is an attempt to repair the harm and damage caused to victims. The Commission acknowledges that reparations, no matter how generous or well-intentioned cannot restore the victim to the status quo ante. That is why everything should be done to guard against human rights violation.

Reference 101 - 0.01% Coverage

8.0.1 International law as well as domestic law oblige government to protect its citizens, and provide redress for those whose human rights are abused, impose sanctions on those whose conduct caused the violation, and prevent a re-occurrence of the conditions that produced the violation.

8.0.2 To this end, the Parliament of Ghana passed an Act, the National Reconciliation Commission Act 2002 (Act 611), to establish a National Reconciliation Commission.. The main function of the Commission was to investigate abuses and violations that occurred particularly during periods of unconstitutional rule, and to seek and promote national reconciliation among the people of the country by recommending appropriate redress for persons who have suffered any injury, hurt, damage, grievance or who in any other manner have been adversely affected by the violations and abuses of their human rights arising from the activities or inactivities of public institutions and persons holding public office during periods of unconstitutional government. The Commission was also to make recommendations that would ensure the non-repetition of the conduct that produced the injury or violation.

Reference 102 - 0.01% Coverage

- Produce proper documentation establishing the nature and causes of serious violations and abuses of human rights;
- Provide an accurate historical record of matters investigated by the Commission;
- Identify victims of violations and abuses of human rights;
- Recommend the specific needs of each victim or group of victims;
- Suggest measures to prevent and avoid the repetition of such violations and abuses;
- Recommend reforms and other measures whether legal, political, administrative or otherwise needed to achieve the objects of the Commission;

Reference 103 - 0.01% Coverage

8.0.4 The Commission investigated the social background of the human rights abuses under the following sectoral themes:

Reference 104 - 0.01% Coverage

8.0.5 These thematic researches provided a kaleidoscopic view of the human rights terrain since Ghana attained Independence, and the information obtained has formed the basis of the recommendations made.

Reference 105 - 0.01% Coverage

8.3.22.2 The training curriculum must be redesigned to include intelligence gathering, awareness and training modules more closely linked to social realities, such as ethnic relations, human rights, common local problems of chronic lawlessness, street delinquency, domestic violence and youth problems.

Reference 106 - 0.01% Coverage

8.3.26.1 The Police Standing Orders must be reviewed in the light of the history of Human Rights violations and abuses in Ghana and the need to nurture democratic culture.

Reference 107 - 0.01% Coverage

PRISON SERVICE 8.3.28 Human Rights Education For Prison Officers

8.3.28.1 Prison Officers should be given human rights education to enable them to appreciate the rights of prisoners. They should also be trained to perform their duties in a humane manner.

Reference 108 - 0.01% Coverage

8.4.1 Human Rights education should form part of Continuing Judicial Education to make them more sensitive to human rights issues.

Reference 109 - 0.01% Coverage

8.4.5 The Ghana Bar Association (GBA), and its leaders deserve commendation for remaining steadfast in pointing out the need to respect the human rights of the citizenry, and for helping to defend those rights, particularly for the indigent.

Reference 110 - 0.01% Coverage

8.4.8 Lawyers, in particular the GBA, should be encouraged to make their voices heard even during periods of constitutional rule, so that the government would receive necessary direction and dispassionate criticism in its conduct of governance, and its respect for human rights.

Reference 111 - 0.01% Coverage

8.5.0.3 On the current media landscape, thanks to the existence of the National Media Commission and the repeal of the Criminal Libel law, the media are safe from threats of human rights violations and abuse that past practitioners suffered, in the course of executing their professional duties. and to the imminent enactment of the Freedom of Information Bill,

Reference 112 - 0.01% Coverage

8.5.2 Courts should appreciate the work of journalists so as not to issue orders that may have the effect of gagging editors and preventing them from publishing information aimed at exposing corruption or human rights violations by officialdom.

8.5.3 The UN Declaration of Human Rights that allows persons to receive and disseminate information must be respected. People must be encouraged to provide accurate information to journalists, whilst at the same time discouraging false and malicious information, in order to facilitate the performance of their role in holding government to account.

Reference 113 - 0.01% Coverage

8.5.9 The curricula of journalism training institutions should be reviewed to include human rights education, as well as the value of a free and independent press.

Reference 114 - 0.01% Coverage

8.7.1 Professional bodies should not confine themselves to the pecuniary interests of their respective associations only, but also avail themselves of the opportunity to make human rights interventions whenever necessary. Professional bodies should make human rights education and protection an integral part of their professional responsibility and ethics.

Reference 115 - 0.02% Coverage

8.7.4 Human Rights education should be made mandatory at all levels of the country's educational system, both civilian and military, from primary to the highest level, with a view to entrenching in generations of Ghanaians deep respect for human life and all other fundamental rights of the person.

8.7.5 The findings of the Commission should be used as teaching materials and scripts for drama, film-making, etc., to educate the nation to avoid similar human rights abuses in the future.

8.7.6 Evidence before the Commission testifies to the fact that there is a general lack of knowledge and consciousness and respect for human rights in the country. This defect should be remedied by a sustained programme of public education by Commission on Human Rights and Administrative Justice (CHRAJ) and National Commission for Civic Education (NCCE).

8.7.7 The CHRAJ which has a human rights advocacy function, should not only be adequately resourced to uphold human rights and fight human rights abuses, but also empowered through legislation to effect expeditious redress whenever and wherever human rights violations occur in Ghana.

8.7.8 The NCCE under the 1992 Constitution should give human rights education priority attention. Its mandate should be properly defined to focus purposefully on human rights education.

Reference 116 - 0.01% Coverage

8.7.11 Practitioners of party politics also need serious education and training in order to know, respect, uphold and defend human rights in the art and practice of Party politics for the development of the citizenry.

Reference 117 - 0.01% Coverage

8.10.2 Chiefs, who are regarded as opinion leaders, should be more vocal on issues of human rights violations in the country.

Reference 118 - 0.01% Coverage

8.11.5 Religion and religious bodies should guard against being used to give legitimacy to illegitimate regimes and governments. Religious Bodies have a duty to teach respect for human rights and freedoms, and to be the prophetic voice as well as the voice of the voiceless, when these rights are at risk particularly in the art of governance. It therefore behoves religion and religious bodies to know these human rights and freedoms in order to be able to hand them down to their members and to the general citizenry.

8.11.6 The various religious traditions in the country should educate their membership with regards to the past human rights abuses and violations with a view to helping forestall their re-occurrence in the future.

Reference 119 - 0.01% Coverage

8.11.8 Religious leadership should be very circumspect in its involvement in matters of politics, and avoid the pitfalls of being manipulated to condone or even support human rights violations and abuses as happened in the past.

8.11.9 In the name of freedom of religion and freedom of association, religion should not be used to discriminate against sections of the citizenry, nor to oppress as well as deprive certain persons of their fundamental human rights and freedoms.

8.11.10 The Forum for Religious Bodies (FORB) and Ghana Conference on Religion for Peace (GCRP) should be strengthened and made into a strong coalition through which religion can effectively contribute to the tutelage of the fundamental human rights and freedoms of the citizenry.

Reference 120 - 0.01% Coverage

8.12.10.2 Public institutions charged with the protection of Human Rights as well as societal watchdogs such as the press, should not in their turn perpetrate human rights abuses by abusing their power. In a situation of poverty, some persons within these bodies yield to the temptation to abuse their power for personal profit.

Reference 121 - 0.01% Coverage

We thank the thousands of petitioners who came to share with us their harrowing experiences of human rights violations and abuses that are only briefly captured in the pages of this Report. They mustered courage to re-live the pains of the past by coming to share their stories with the Commission and the world. We are grateful to the respondents and many other people who shared information with us at our public and in camera hearings, as well as those who appeared before, or submitted memoranda to, the special thematic and institutional committees of the Commission.

Reference 122 - 0.02% Coverage

1.1.1 Since the attainment of Independence from the United Kingdom on 6th March, 1957, Ghana has experienced four military coups d'état (1966, 1972, 1979 and 1981) and numerous attempted coups. Most of these events have occasioned extensive human rights violations and abuses. The fundamental human rights and freedoms of many people have also been violated or abused during periods of constitutional rule in Ghana. As a result, considerable anguish and bitterness still pervade many segments of Ghanaian society.

1.1.2 The establishment of the National Reconciliation Commission (hereinafter referred to as "the Commission") came in the wake of Ghana's historic elections of December, 2000, which witnessed, for the first time in the country's post-Independence history, a change of constitutionally-elected government effected, not by violent means, but by popular vote. That event was a clear testimony to the strong desire of Ghanaians to live under conditions of democratic accountability, and to forge a society firmly grounded in the respect for human rights and the rule of law. The consolidation of democracy and the sustenance and promotion of constitutional rule and a culture of respect for fundamental human rights and freedoms as enshrined in Chapter five of the 1992 Constitution, demand that Ghana should deal with its history of egregious human rights violations that risk compromising the forward march of democracy and peace in the country. Building a future for a Ghana that is united, secure, peaceful and humane also demands providing redress, including healing, for those who were hurt in the past by serious human rights violations and abuses in the nature of killings, abductions, disappearances, torture, detentions, seizure of property and ill-treatment. The Commission was seen by Parliament as a vehicle to facilitate the attainment of these goals.

Reference 123 - 0.01% Coverage

manner been adversely affected by violations and abuses of their human rights arising from activities or inactivities of public institutions and persons holding public office during periods of unconstitutional governments and to provide for related matters.

1.2.2 Thus, the work of the Commission is a major development imperative for Ghana, a country engaged in fostering a culture of respect for fundamental human rights and freedoms, the rule of law, the consolidation and enhancement of democracy, and the strengthening of its governance institutions.

Reference 124 - 0.01% Coverage

1.5.1 The President appointed Dr. Kenneth Agyemang Attafuah, the Director of Promotion and Anti-Corruption at the Commission on Human Rights and Administrative Justice (CHRAJ), as the Executive Secretary of the Commission.

Reference 125 - 0.02% Coverage

1.6.2 The mandate of the Commission was to help reconcile the people of Ghana by finding out the truth about past human rights violations and abuses and helping the victims of those violations and abuses to deal with their pain, and to move on with their lives. The mandate of The Commission also included helping the perpetrators of such violations and abuses to come to terms with their past, and seek forgiveness. Section 20(2)(e) and (g) of Act 611 also required the Commission to recommend reforms and measures to prevent and avoid the repetition of such violations or abuses and to promote healing and achieve national reconciliation.

1.6.3 Section 3(1) of Act 611 imposed on the Commission the obligation to seek and promote national reconciliation among the people of Ghana. This objective was to be achieved through two principal means. First, the Commission was required to establish an accurate, complete and historical record of human rights violations and abuses inflicted on persons by public institutions and holders of public office, or persons who claimed to have acted on behalf of the State during periods of unconstitutional government.

1.6.4 Second, the law required the Commission to recommend to the President appropriate measures to assuage the pain of, and make reparation to those whose human rights were violated or abused during the specified periods. The Commission was also required to recommend measures to prevent such occurrences in future.

Reference 126 - 0.01% Coverage

(a) investigate violations and abuses of human rights relating to killings, abductions, disappearances, detentions, torture, illtreatment and seizure of properties suffered by any person within the specified periods;

Reference 127 - 0.01% Coverage

(3) Investigations and Research • Received, recorded and processed petitions, statements and memoranda; • Investigated petitions and prepared investigation reports; • Provided broad documentation, storage and retrieval services; • Coded petitions and provided general statistical services; • Conducted research into the context/circumstances of human rights violations and abuses;

Reference 128 - 0.01% Coverage

served as the location for the sittings of Parliament in the 1st, 2nd and 3rd Republics of our post independent history. Above all other structures, it is associated with our hopes and aspirations of building our new state on the principles of Freedom and Justice, the perennial goals to which the founders of our state dedicated its existence and inscribed on our Coat of Arms as the words of the nation's motto. ...Alas, for too many years of our nation's history, especially during the prolonged eras of unconstitutional government, the attainment of these goals proved illusory, giving way rather to the establishment of a tragic culture of extensive violations, by state actors, of the human rights of the citizenry of this country, leaving in its wake considerable rancour, anguish and ill-feeling within several segments of society. It is, therefore, altogether most fitting and proper when we are, through the instrumentality of this Commission, seeking to come to terms with its unhappy past and forge a new era of reconciliation and unity in our nation, that the National Reconciliation Commission should be housed in this building to undertake its momentous task

Reference 129 - 0.01% Coverage

b) giving prospective petitioners an opportunity to make a statement outlining the substance of their claim of human rights violation or abuse;

Reference 130 - 0.01% Coverage

1. establish accurate, complete and historical record of violations and abuses of human rights inflicted on persons by public institutions and holders of public office or persons who claimed to have acted on behalf of the state during periods of unconstitutional government;
2. recommend appropriate redress for persons who had suffered any injury, hurt, damage, grievance or who had in any other manner been adversely affected by violations and abuses of their human rights; and

Reference 131 - 0.01% Coverage

2.3.1 The Commission regarded the obligation to establish an "accurate, complete and historical record of violations and abuses of human rights" as the cornerstone of its mandate. Fulfilling this obligation demanded that the Commission should be scrupulously fair and thorough in its statement-taking, investigations and hearings.

Reference 132 - 0.01% Coverage

✓3.3.1.1 The Commission was specifically required by Act 611 to investigate violations and abuses of human rights relating to "killings, abductions, disappearances, detentions, torture, ill-treatment and seizure of properties" suffered by any person at the hands of "public institutions, public office holders or persons purporting to have acted on behalf of the state..."

2.3.3.1.2 The Act also gave the Commission the discretionary power to investigate and make appropriate recommendations in respect of any petition alleging similar human rights violations, but which allegedly took place during periods of constitutional rule between 6th March, 1957 and 6th January, 1993. In exercise of this discretionary power, the Commission decided that, to further its aims of national reconciliation, it would not make any distinction between petitions alleging human rights violations during periods of constitutional and unconstitutional rule. It accepted complaints relating to the entire mandate period without the need for any special application by petitioners.

Reference 133 - 0.01% Coverage

2.3.3.2.1 The Commission gave a broad and liberal interpretation to each of the categories of violations and abuses specified in section 4(a) of Act 611. Thus, it was able to receive, investigate and hear petitions alleging human rights violations and abuses founded on subjection to mock executions and forced cannibalism as instances of torture, while under the rubric of ill-treatment, it accepted and processed complaints ranging from dehumanising treatment to administrative injustice that rose to the level, or met the threshold, of human rights violations. In construing the meaning of the specified violations and abuses, the Commission relied on

Reference 134 - 0.01% Coverage

international human rights law and humanitarian law principles, as well as common law understanding of the specified violations.

Reference 135 - 0.01% Coverage

Section 4(b) of the Act also charged the Commission to investigate the context, causes and circumstances of the violations and abuses. This meant that the Commission was required to undertake comprehensive investigations that would enable it to uncover the conjunction of factors that underpinned, enabled and accounted for the specified forms of human rights violations and abuses during the relevant historical periods. Thus, the Commission was duty bound to explore and identify the root causes, broad socio-political environment, surrounding circumstances and the precipitating factors, if any, of the violations brought to its attention.

Reference 136 - 0.01% Coverage

1. undertaking public education and sensitisation activities in English and in numerous local languages throughout the country, on the mandate of the Commission, and emphasising the need for all victims of the specified forms of human rights violations and abuses during the relevant periods to come to the Commission and make a statement/petition;
2. inviting, through various media of public education and sensitization – both locally and internationally – all persons with knowledge of human rights violations and abuses, even where those persons were not the direct victims, to make a statement to the Commission in respect of those violations and abuses they might have heard about, witnessed or observed during the relevant period, whether the events took place at a time of constitutional or unconstitutional government;

Reference 137 - 0.01% Coverage

2.3.3.6 The Commission was obliged under Section 4(d) of Act 611 to determine whether a human right violation or abuse was deliberately planned. Where an allegation of human rights violation or abuse was made against any individual, the Commission had a duty to invite the alleged perpetrator or respondent to respond in writing to the allegation. Where the petitioner subsequently testified before the Commission, the Commission was duty bound to give the alleged perpetrator an opportunity to be present at the hearing, provided they had previously submitted a written statement in response to the allegation, to cross-examine the petitioner under oath or affirmation, and to testify on their own behalf if they so wished.

Reference 138 - 0.02% Coverage

universally established principle in human rights investigations by quasi-judicial investigative bodies. Where, after considering all the evidence before it, the Commission found it more probable than not that the petition was justified, it was required under section 4(c) of the Act to “make appropriate recommendations for redress”. Section 20(d) also imposed a similar obligation on the Commission, in such a situation, to recommend an “appropriate response to the specific needs of [that] victim or group of victims”. Conversely, where the Commission was persuaded on the above basis that events did not occur as alleged, it was bound to find that the petition was not justified and therefore, to dismiss it.

2.3.3.6.3 Where the Commission, using the above-stated civil standard of proof, found that a human rights violation or abuse had occurred, it had a duty under section 4(d) of the Act to proceed to another level of enquiry, namely, to establish whether or not the violation or abuse was the result of deliberate planning and execution, or a chance occurrence.

2.3.3.6.4 To achieve this end, the Commission, in addition to resorting to traditional investigative techniques, established six special committees of the Commission to examine the role, if any, played by various institutions of state and civil society groups in human rights violations³. The Committees invited several key actors during the relevant periods, or persons who were closely acquainted with the workings of the relevant bodies, as well as experts, to testify before it or to submit memoranda as might be appropriate. The findings and recommendations of these special committees, and a description of their composition and work appear in Volume IV of the report.

2.3.3.6.5 In the Commission’s view, the articulation of this obligation in the statute highlighted Parliament’s conviction that particularly intentional, as opposed to accidental or systemic, acts of human rights violations and abuses must be singled out for special attention, condemnation and prevention.

Reference 139 - 0.01% Coverage

The families of the six had alleged that their executed loved ones were subjected to severe forms of torture during their arrest, interrogation and incarceration, contrary to established human rights standards and norms, including principles for the treatment of detained persons. The exhumation also uncovered the remains of two unknown persons who were later positively identified as:

Reference 140 - 0.01% Coverage

✓Principles of fundamental human rights and freedoms ✓The International Bill of Human Rights ✓General nature and purposes of Truth and Reconciliation Commissions (TRC)

Reference 141 - 0.01% Coverage

✓Principles and techniques of human rights investigation ✓Field investigations – methods and skills

Reference 142 - 0.01% Coverage

✓Investigation planning: reasons and formats ✓Dos and Don’ts in interviewing witnesses ✓Note-taking and record-keeping skills ✓International standards of human rights research and methodology ✓The role of research in the TRC context ✓Due process issues in human rights investigations ✓Forensic investigations and truth-finding ✓Exhumations and preservation of evidence: handling delicate materials ✓Data gathering, compilation and storage ✓Investigative report writing ✓Effective summary of cases

Reference 143 - 0.01% Coverage

2.5.2.1 The Commission started taking statements of alleged human rights violations and abuses from the public on 3rd September, 20024. By the end of statement-taking it had received 4240 petitions from individuals all over the country and abroad.

Reference 144 - 0.01% Coverage

5 While the Commission considered none of the human rights violations and abuses specified in section 4(a) of Act 611 as trivial, it took the view that killings constituted the ultimate human rights violation to be rated as more severe because of its finality, among other reasons, than some instances of illtreatment such as delayed payment of pension or retirement benefits that caused suffering. Similarly, the Commission regarded torture as more egregious than wrongful dismissal. Therefore, all things being equal, the Commission gave killings and torture a higher priority in the scheduling of petitions for hearing.

Reference 145 - 0.01% Coverage

2.7.1 In addition to the foregoing methods and procedures, and in order to facilitate its work, the Commission established, as pointed out earlier, six special committees to examine the role, if any, played by a number of key state institutions and civil society groups in human rights violations, as well as their potential role in preventing such violations and abuses in future. This was pursuant to the powers granted it by section 7(1) of Act 611. The committees were the following:

Reference 146 - 0.01% Coverage

The events which led to Ghana becoming a State that achieved Independence on 6th March, 1957, have had a great impact on the course of the nation's history. Problems that had emerged before Independence continued to dog the footsteps of the new nation; problems that had been shelved or side-stepped did not go away; and problems that emerged subsequent to the attainment of Independence, came in to compound the already difficult situation. These legacies of the pre-Independence period have remained of significance in charting the course of the new nation, and on the human rights record of the various governments since Independence.

Reference 147 - 0.01% Coverage

POST-INDEPENDENCE EVENTS WITH MAJOR HUMAN RIGHTS IMPLICATIONS 3.2.0

Reference 148 - 0.01% Coverage

3.2.1.6 When the PDA was challenged in the Supreme Court in the celebrated case of *Re Akoto*, the court ruled that the declarations under the 1960 Constitution on human rights did not impose a legally-enforceable obligation on the President, but only a moral one to respect the Declarations he was required to make upon assumption of office. The Supreme Court went further to state that the moral obligation to respect rights could be enforced by the people through the ballot box. With the door of the courts firmly shut in the faces of the detainees, a sense of desperation began to mount in the country.

Reference 149 - 0.01% Coverage

3.5.4.1 Students hailed the military takeover, as the Students Loan Scheme was withdrawn. The adoption of the "Operation Feed Yourself" programme further increased the popularity of the government with the students. The students demonstrated their support by forgoing their long vacation in order to work on national projects and to improve agriculture in the country. However, they were soon embroiled in dispute with the government over its human rights record and its economic policies. The antagonism grew, leading to strikes and protest marches that resulted in constant disruption of the universities' academic schedules. These protest actions led to the arrest and detention of many student leaders for short periods of time. The repressive and extremely brutal measures adopted to quell student demonstrations, including the invasion of the campuses by police, left a number of casualties among students of the universities.

Reference 150 - 0.01% Coverage

3.9.2 The human rights abuses that occurred as office holders struggled to keep the entity Ghana together, could also be traced to the fractious nature of relations among the leaders of the ruling party and the opposition parties of the period. The enactment of the PDA, ostensibly to check terrorism, led to the dismemberment of opposition parties and the transformation of Ghana into a one-party state. These events were in no small way responsible for the public disaffection that was displayed against the CPP when the government was overthrown.

Reference 151 - 0.01% Coverage

all testify to the fact that respect for human rights and respect for due process are necessary values that must be cultivated and upheld in this country.

Reference 152 - 0.01% Coverage

4.0.1 In documenting the human rights violations and abuses that occurred during the period – 6th March, 1957, to 6th January, 1993 – it is pertinent to consider the social context in which such human rights violations and abuses occurred. This chapter therefore considers the factors that created the environment that made it possible for such acts to happen. For example, whether or not there was tacit complicity in, or active resistance to the human rights violations that took place by various organs of state or by identifiable civil society groups during the mandate period. 1

Reference 153 - 0.01% Coverage

4.1.1.0 HUMAN RIGHTS ABUSES DURING THE 1st REPUBLIC

Reference 154 - 0.01% Coverage

4.1.2 REACTIONS TO THE HUMAN RIGHTS ABUSES

Reference 155 - 0.01% Coverage

4.1.2.1.2 As regards the issue of complicity in, or resistance to human rights violations and abuses by the security services during the Nkrumah era, it is fair to say that the military devoted themselves to the defence of the country against internal and external aggression, and the provision of relief services in

cases of emergency. Soldiers kept to the barracks, and did not have much to do with the civilian population, and for all practical purposes, they were passive observers of the human rights violations and abuses inflicted on the citizenry as a result of the Preventive Detention Act (PDA), until they took up arms and overthrew the Nkrumah government in 1966.

Reference 156 - 0.01% Coverage

4.1.2.1.5 By their actions, the police confirmed, in the minds of the public, the view that they were agents used by the government to suppress them and to violate their human rights.

Reference 157 - 0.01% Coverage

4.1.2.1.7 In the early years of post-Independence Ghana, the Special Branch became a tool for fishing out persons who were perceived to be threats to the personal security of Dr. Nkrumah. In the process, a number of people had their human rights trampled upon, for many were arrested on the basis of false accusations made against them to the Special Branch by informants and "intelligence fabricators" – people who made false reports in order to curry favour with those in authority, or in order to settle personal scores.

Reference 158 - 0.01% Coverage

4.1.2.1.9 At the time of Independence, the main infrastructures for incarceration were the forts and castles, which were primarily designed as 'transit quarters' for slaves waiting to be taken across the Atlantic Ocean to the new world. The service and its staff have since Independence acquired the unenviable reputation as primary human rights violators and abusers, during both periods of constitutional and unconstitutional rule. This is not surprising, given the deplorable conditions in the forts and castles which served as prisons.

Reference 159 - 0.01% Coverage

4.1.2.1.10 During the era of the CPP government, large numbers of members of the opposition parties, who were imprisoned under the PDA, suffered severe human rights violations and abuses in the prisons. To start with, the detainees had been deprived of their freedom for up to five years. (This period was extended by another five years when the first batch of detainees had completed the five years imprisonment, and were looking forward to their release). They had been deprived of their rights to seek the protection of the courts against arbitrary Executive action. In addition, they suffered various kinds of deprivation at the hands of the Prison Officers in whose care they had been placed.

Reference 160 - 0.01% Coverage

4.1.2.1.12 It is clear from the above that the attitude of Police and Prison Officers contributed immensely to the human rights violations and abuses suffered by, especially, victims of the PDA during Nkrumah's CPP government.

Reference 161 - 0.01% Coverage

4.1.2.2.3 The dismissal of the Chief Justice and his forced retirement was a violation of his human rights. It may also be said that the dismissal of the Chief Justice undermined the sense of security of tenure that judges should have in order to discharge their duties without fear or favour.

Reference 162 - 0.01% Coverage

4.1.2.3.5 This account of trade unionism during Nkrumah's CPP government clearly shows that the leadership of the Labour Movement at the time was, at best, a passive onlooker, and at worst, an accomplice, in the human rights violations and abuses that the Nkrumah government inflicted on the citizenry.

Reference 163 - 0.01% Coverage

4.1.2.4.5 Indeed, Dr. Nkrumah and his CPP government openly taunted chiefs, saying that those who refused to conform or would not do business with his government "would run away and leave their sandals behind". Chiefs who were considered "good boys" were promoted to the status of paramountcy. It is not surprising, therefore, that chiefs as a body, even after the creation of the National House of Chiefs in 1958, by an Act of Parliament, never criticised or opposed the use of the PDA to suppress opposition to the CPP government, and to perpetuate human rights violations and abuses against the citizenry.

Reference 164 - 0.01% Coverage

4.1.2.5.1 In general, it may be said that there are three major religious groups in Ghana. These are adherents of Traditional Religion, Islam and Christianity. The role, if any, of these religious groups as regards their complicity in, or resistance to human rights abuses and violations during the mandate period will be examined for each group in turn.

Reference 165 - 0.01% Coverage

4.1.2.5.2 Traditional religion is the oldest religion in Ghana, but it has no organised structure or association. There is no evidence that the group at any time ever criticised or supported human rights violations or abuses by any government during the mandate period.

4.1.2.5.3 However, there is evidence that certain practices of this group constitute human rights violations. These practices are part of the culture of the people, and therefore have been with Ghanaian society from pre-colonial times to the present. In other words, they are not limited to any particular period in the history of the country.

4.1.2.5.4 One such traditional practice, in some parts of the country, is Trokosi, which is the practice of giving up vestal virgins by families as "payment" to shrines for infraction committed by one of its members. This practice is fraught with serious human rights violations, for it involves the incarceration for life, and abuse of mostly young females, some as young as eight years. They work on the farms of, and bear children for the priests of the shrine.

Reference 166 - 0.01% Coverage

4.1.2.5.6 All these are instances where traditional religious groups are known to be perpetrators of human rights violations and abuses.

Reference 167 - 0.01% Coverage

4.1.2.5.10 There is no evidence of complicity in or resistance to human rights violations or abuses during Nkrumah's CPP era by this religious group.

Reference 168 - 0.01% Coverage

4.1.2.5.15 On the whole, the Christian Religious Bodies put up resistance, during Nkrumah's Government, to issues that they perceived as blasphemous or as an infringement on the human rights of individual citizens.

Reference 169 - 0.01% Coverage

4.2.1.0 HUMAN RIGHTS VIOLATIONS AND ABUSES UNDER THE NLC

Reference 170 - 0.01% Coverage

4.2.1.3 Members of the Presidential Detail Department (PDD) became targets of human rights abuse by the security forces. Some were lined up and executed after they had surrendered to the attacking forces, and others were detained under the Protective Custody Decree.

Reference 171 - 0.01% Coverage

4.2.2.0.1 It was no surprise, therefore, that Nkrumah's overthrow was met with jubilation, especially as hundreds of detainees, whose relations had lost hope of their ever coming home, were released from prisons throughout the country. The euphoria that pervaded the society at the time clouded people's awareness of the human rights abuses committed by the NLC government. Indeed, the detentions and other violations and abuses suffered by members of the CPP were considered to be deserved retribution, and there were no protests against the NLC government, as documented below.

Reference 172 - 0.01% Coverage

4.2.2.4.1 Following the overthrow of President Nkrumah's Government, the Christian Council held a non-denominational service at the Accra Sports Stadium to thank God for liberating the country from the one-party rule of the CPP government. This show of support for the NLC and the general anti-CPP government feeling that pervaded the country seemed to have blinded even the religious bodies, both Muslim and Christian, to the human rights abuses against CPP functionaries, the PDD or the violent suppression of the Prestea mine workers' protests.

Reference 173 - 0.01% Coverage

4.2.2.6.3 However, the LSNA's strong opposition to the CPP compromised its ability to protest against the arrests, detentions, confiscation of properties and other human rights abuses meted out to CPP leaders and functionaries. These were seen as deserved punishment.

Reference 174 - 0.01% Coverage

4.2.2.7.2 Student leaders who had been detained under PDA were released by the NLC, and like many other members of Ghanaian society, students felt that the detention and other human rights abuses meted out to CPP functionaries were deserved retribution, and therefore did not protest against them.

Reference 175 - 0.01% Coverage

4.3.1.0 HUMAN RIGHTS ABUSES UNDER THE 2ND REPUBLIC

Reference 176 - 0.01% Coverage

4.4.1.0 HUMAN RIGHTS ABUSES AND OTHER ACTS THAT CAUSED DISAFFECTION TOWARDS THE NRC/SMC I & II

Reference 177 - 0.01% Coverage

4.4.2.1.5 As had happened during the time of the NLC, lawyers helped in drafting the legal instruments that legitimized the seizure of power by the Military, as well as other decrees that prevented the general population from enjoying their fundamental human rights and freedoms. For example, under the Subversion Decree, 1972 (NRCD 90), the Military Tribunal was subject to the supervisory jurisdiction of the High Court. Some nine persons were convicted by the tribunal for conspiring to commit subversion and this was confirmed by the High Court. When two of them filed an appeal against the detention on 23rd July, 1973, the NRC passed the Subversion (Amendment) (No.2) Decree, 1973 (NRCD 91) on 24th July, amending the original Decree. This amendment ousted the jurisdiction of the courts to exercise supervision over the Military Tribunal.

4.4.2.1.6 Again, as had happened during the government of the NLC, the President of the GBA, E.N. Moore, became the Attorney-General of the NRC, thus limiting the Association's capacity to be critical of the detentions and other human rights abuses suffered by functionaries of the ousted government.

Reference 178 - 0.01% Coverage

4.4.2.4.2 Having openly declared their support for Unigov, the Muslim groups were not in a position to criticise the human rights violations and abuses unleashed on the citizenry during the campaign for the referendum on Unigov.

Reference 179 - 0.01% Coverage

4.4.2.5.2 As wanton arrests and beatings of opponents of the Unigov concept persisted during the campaign for the referendum on Unigov, the two orthodox Christian bodies, wrote a joint pastoral letter to the government. They protested against the human rights violations and abuses, and, in particular, the severe beating of the Headmaster, the Assistant Headmaster and students of Opoku Ware Secondary School, Kumasi; the beating up of the students of Mfantsipim School, Cape Coast, the arbitrary arrest and detention of K. Addai-Mensah, National Secretary of the Ghana Bar Association; the use of the law-enforcement agencies to molest people; and the denial of freedom of speech and of association to civil society organisations such as the PMFJ, and to the general population.

Reference 180 - 0.01% Coverage

4.4.2.6.8 The media-government relationship during the NRC/SMC period makes very interesting study. To start with editors were dismissed or even detained, thus giving notice to the in-coming ones to toe the line prescribed by the regime. Such faithful editors and journalists were further co-opted by inducements of gifts and cash, and it is not surprising that some went overboard and used their columns not only to support the regime, but also intimidate and vilify the regime's opponents, such as the professionals,

projecting them as enemies of the ordinary people, and therefore not deserving of public sympathy when they suffered human rights abuses.

Reference 181 - 0.01% Coverage

4.5.1.0 HUMAN RIGHTS VIOLATIONS UNDER THE AFRC Human Rights Violations Against The Military

Reference 182 - 0.01% Coverage

Human Rights Violations Against Civilians

Reference 183 - 0.01% Coverage

4.5.2.1.3 With the President of GBA so closely associated with the abuses perpetrated by the AFRC, the GBA was not known to have protested against the human rights violations and abuses suffered under the AFRC. Subsequently, W. Adumoah-Bossman was ousted from office later that year largely on account of his participation in the work of the AFRC.

Reference 184 - 0.01% Coverage

4.5.2.5.4 During this period, the newspapers gleefully endorsed and gave vivid accounts of the gross human rights abuses that occurred. Apart from the executions, there were the public flogging, especially, of market women, some stripped naked, as well as contractors and other people accused of kalabule. Some of these reports were accompanied by pictures.

4.5.2.5.5 Special mention must be made of the bold stand of state-media journalists like Elizabeth Ohene and Adjoa Yeboah-Afari who, respectively, wrote editorials and articles condemning the executions and the other human rights abuses.

Reference 185 - 0.01% Coverage

Consequently, there were no protests from these groups against the execution of the eight Senior Military Officers without trial, nor the many atrocities committed against the citizenry in the name of the "house-cleaning" exercise that the AFRC announced was its objective in seizing power. Even when the leaders of political parties met the AFRC, the main concern was to secure an assurance from the AFRC that they would continue with the transitional programme of return to democratic rule. Nothing was said about the executions, the seizure of assets, the demolition of houses, the public flogging of traders and other human rights violations meted out to people suspected of economic sabotage.

4.5.2.6 2 Considering the extent of the atrocities that took place during the short life of the AFRC, the absence of public condemnation of these atrocities, and therefore quiet acceptance of such human rights abuses, was a clear indication of the general lack awareness or concern about human rights among even the elite of the society - a clear illustration of the absence of a human rights culture in Ghanaian society.

Reference 186 - 0.01% Coverage

4.5.2.7.6 Considering the youthful fervour with which the students supported and encouraged the AFRC in their "house-cleaning" exercise, it would appear that they did not, or could not appreciate the seriousness of the grievous human rights violations and abuses that the AFRC meted out on the Ghanaian population.

Reference 187 - 0.01% Coverage

4.6.1.0 HUMAN RIGHTS VIOLATIONS UNDER THE 3rd REPUBLIC Vigilante Groups

Reference 188 - 0.01% Coverage

4.6.1.2 The Limann Administration, faced with the threat of a return to kalabule trade malpractices, formed "Vigilante Committees" to oversee the supply and distribution of goods, to prevent the creation of scarcities on the market. They ended up as perpetrators of human rights abuses on traders and wholesalers.

Reference 189 - 0.01% Coverage

4.7.1.0 HUMAN RIGHTS VIOLATIONS UNDER THE PNDC

Reference 190 - 0.01% Coverage

4.7.1.5 Some soldiers also harassed people and seized goods of civilians not only at the markets and shops but also at arbitrarily set-up road barriers, at the Airport, harbours and other points of entry. Some of them, on their own initiative, seized private cars, ostensibly for "operations", and crashed them or returned them in a state only fit to be disposed of as scrap. Some individuals who resisted such seizure of private cars were shot dead, and those who survived, were seriously maimed. All these and other acts of human rights violations and abuses were carried out in the name of the revolution.

Reference 191 - 0.01% Coverage

4.7.1.14 Other human rights violations and abuses were inflicted on the citizenry by the two Commando Units the PNDC established within the Military and the Police. These young men were given special training in Cuba and Asutsuare, Ghana. Evidence before the Commission indicated that the worst cases of torture inflicted on those arrested for subversion and other crimes were done by these commandos. They had the power to collect such people from BNI cells and from the prisons at night, and put them through severe physical and mental torture including mock execution. Although they were

Reference 192 - 0.01% Coverage

4.7.1.16 Apart from the killings, abductions, torture and other forms of violent abuse of people's rights, one form of human rights abuse that affected large numbers of people were premature retirement and dismissals of personnel in the public service and in the security services – Military, Police as well as the Prisons Service.

Reference 193 - 0.01% Coverage

4.7.2.1.10 When the Public Tribunals were established, the GBA expressed its opposition to them. The reasons were among others the fact that the panel was made up of only one lawyer and two or more persons; that the votes of the lay panel members and that of the lawyer had equal weight in deciding the fate of an accused; tried by the tribunals did not have the right to appeal. The GBA therefore refused to appear before the public tribunals. Some of the members, however, defied the ban and practised law

before the tribunals. The tribunals often passed unreasonably long terms of imprisonment, thus contributing to the human rights violations and abuses of those who were tried by them.

Reference 194 - 0.01% Coverage

4.7.2.1.12 Some individual lawyers, offered free legal services to detainees and other persons suffering human rights abuses under the PNDC, at great risk to themselves.

Reference 195 - 0.01% Coverage

4.7.2.3.3 There is therefore no evidence of chiefs speaking out against the killings, disappearances, seizure of private property, harassment of citizens wrongful dismissal of hundreds of workers, the abduction and murder of the three High Court Judges and the retired Army Officer and other human rights violations that took place during the PNDC era.

Reference 196 - 0.01% Coverage

4.7.2.4.1 During the PNDC era the Federation of Muslim Councils was formed with support from the president of Libya, Col Muammar al-Qathafi was inaugurated by Chairman Rawlings on 4th April 1987, to be the umbrella body for all Muslim organizations in Ghana. As in previous regimes, the Muslim religious groups were more concerned with issues of Muslim unity, than with human rights issues.

Reference 197 - 0.01% Coverage

4.7.2.4.6 In 1989, the government sought to control Religious Bodies by requiring that they should all be registered under the Religious Bodies Registration Law, 1989, (PNDC L 221). In a joint memorandum dated 11th August, 1989, the Christian Council and the Catholic Bishops' Conference expressed their objection to the law which they felt was an infringement on the fundamental human rights of freedom of worship. They were concerned that the registration would make it possible for the government to deny legal existence to some Religious Groups. Indeed, the Jehovah's Witnesses; the Church of Jesus Christ of Latter Day Saints; The-Lord-is-My-Shepherd Church in Kumasi; and Prophet Ekwam's Church at Gomoa Buduburam were banned. Regrettably, protests from the Christian religious bodies against this action were rather muted.

Reference 198 - 0.01% Coverage

4.7.2.5.5 The private press in particular came under constant harassment, as they were the only ones that dared criticise the government for the various human rights violation and abuses that occurred during this period. In July 1982, angry workers attacked the offices of Echo and The Believer in Accra and destroyed their equipment because they had allegedly used their columns to incite the people against the government. In June 1983, the offices of The Free Press and The Citadel Daily were similarly attacked by a group of protesters. Later in the year, three senior staff of the Free Press – Tommy Thompson, John Kugblenu and Mike Adjei were arrested and detained, and the paper closed down for its critical stance against the government.

Reference 199 - 0.01% Coverage

4.7.2.6.1 The lack of a human rights culture in Ghanaian society that had been noted elsewhere, was poignantly clear during the PNDC era. People were assaulted, maimed, arrested, detained, tortured, abducted and killed. Properties were seized or destroyed. Even the abduction and gruesome murder of the three High Court Judges and the retired Army Officer, which shocked the rank and file of Ghanaian society, did not generate mass protests throughout the country.

4.7.2.6.2 Indeed it may be fair to say that opposition to the PNDC regime from the GBA and ARPB was driven as much by the demand for a return to constitutional rule as by a commitment to defend human rights.

Reference 200 - 0.02% Coverage

4.8.8 The third trait that came across from the evidence before the Commission was selfishness. This may be stated as: "once the problem or the human rights violation or abuse affects somebody else, and not me, it really is not my business". This kept coming up each time the military took over power, and a new group of people were sent into prison without trial, ostensibly for their own good, as the "Protective Custody" Decrees seemed to imply. Those who had been imprisoned under Dr. Nkrumah's PDA, said they teased the CPP Ministers, Parliamentarians and party functionaries as they were being brought to replace them in the prisons. It is very instructive, for example, that Victor Owusu, who had himself suffered detention without trial under PDA, had, as Attorney General during the NLC regime, helped in drafting the Protective Custody Decrees passed by the NLC, which sent some people into detention for having jubilated upon hearing of the abortive coup in April, 1967.

4.8.9 The fourth trait of some individual Ghanaians that has allowed the human rights violations and abuses to occur was cowardice. People generally are afraid to confront officialdom on any issue. Most people do not openly criticize governments or people in authority for fear of losing their jobs or being punished. This trait in individuals is bad enough, but when it surfaces in groups, as have been shown in the main sections of this chapter, where accounts of the reaction of various organized bodies have been given, it is

Reference 201 - 0.01% Coverage

only the Ghana Bar Association and, at times, the Religious Bodies, that have raised their voices against human rights and abuses meted out against the people of this country. This is a sad comment on our sensitivity to human rights issues in this country. In this connection, the boldness of the three High Court Judges who were murdered must be highly commended.

Reference 202 - 0.01% Coverage

4.9.19 Again, evidence before the Commission pointed to the fact that most of the victims tried to attribute their sufferings to not belonging to the tribe of the perpetrators of those human rights abuses and violations. It was believed because of their tribal affiliation, such perpetrators did whatever they did with impunity.

Reference 203 - 0.01% Coverage

4.10.1 The evidence from the foregoing analysis of the social context, in which human rights violations and abuses occurred in Ghana during the period from 6th March, 1957, to 6th January, 1993, indicates a painful lack of awareness of human rights values among Ghanaians, both as individuals and as groups.

4.10.1 The social context in which the human rights violations and abuses occurred was, to a considerable

extent, created and fanned by the media. It has already been noted that, invariably, every new government changed the Editors of the state-owned media, to ensure that they would support their cause and propagate whatever ideology the new government had. The Editors then went out of their way to vilify the former government by cataloguing all the ill-sreal and imagined – that the previous government had been guilty of. This was particularly true whenever the military take over power.

Reference 204 - 0.01% Coverage

Although the overthrow of the Nkrumah government was generally welcomed as rescuing the nation from a suffocating dictatorship, it brought in its trail some human rights abuses. In the course of overthrowing the government, grave human rights violations were committed, especially against members of Nkrumah's security apparatus known as the Presidential Detail Department (PDD). Eye witness accounts given to the Commission have it that one of the first ports of call of the insurgents was Flagstaff House, where Nkrumah lived and the blocks of flats opposite it in which members of the PDD and their families lived. The flats were surrounded by soldiers, the inmates brought out and the men taken away. Women and children were forced, some at gun point, to leave their homes. Some men, and even boys, were shot dead. Those who were not killed were subjected to various

Reference 205 - 0.01% Coverage

5.2.5.16 Kwame Obeng who was a few months old in 1967, petitioned that in that year his mother Ama Amponsah of Sekyere Odumasi was arrested and detained. He could not tell the Commission the reason for his mother's arrest or for how long she was detained. The details given are too scanty for a determination to be made as to whether there were any human rights issues involved.

Reference 206 - 0.01% Coverage

5.4.0.3 The petitions received by the Commission on human rights abuses during the period of the NRC and the SMC covered Killing, Maiming, Torture, Ill-treatment, Detention Without Trial, Invasion of Property Rights, Interference with the Right to Work and Abuse of the Judicial Process.

Reference 207 - 0.01% Coverage

The comparison between what some governments paid their soldiers and what the Government of Ghana paid Ghanaian soldiers is misplaced and does not disclose any human rights violation. Individual soldiers were not parties to the agreement between the government of Ghana and the UN.

Reference 208 - 0.01% Coverage

6.6.1 Elizabeth Mensah The experience of Elizabeth, a dealer in beer and provisions at Esikafo Ambantem, Takoradi, illustrates how indisciplined soldiers used the control of prices and decrees on hoarding as a pretext for stealing and perpetrating human rights violations. This is how she described her ordeal:

Reference 209 - 0.01% Coverage

7.4.46 Nana Kwaku Agyeman met a stranger in a drinking bar and engaged him in a conversation about human rights abuses committed by the PNDC. Subsequently he was arrested and subjected to ill-

treatment. Soldiers slapped him several times and made him to roll on the ground while he was kicked. They also stamped on his testicles.

Reference 210 - 0.01% Coverage

7.6.51 Alex Kwame Yeboah, a security officer at Tema Harbour, was arrested with others by soldiers on an allegation of stealing. He was stripped to his pants, beaten with the butts of rifles and drilled. He sustained injuries resulting in a surgical operation. Cpl Issah, Sgt Addison, Sgt Adamu and L/Cpl Victor Fiavor, who were identified as the perpetrators of these human rights abuses, were summoned to the Military Police Headquarters, but were released on the intervention of their superior officers. It seems soldiers on duty at the Tema Harbour were above the law.

Reference 211 - 0.01% Coverage

7.8.171 Nana Kwaku Agyeman While in a Koforidua drinking bar, Agyeman made critical remarks about the human rights record of the PNDC. He was arrested and detained at the Koforidua Central Prison and at Effiduase Police Station for three-and-a-half months.

Reference 212 - 0.01% Coverage

John Frimpong Frimpong reported a vision he had seen of the second coming of Christ. He refused counseling which might have determined the state of his mind and the cause or causes of his condition. In the absence of evidence that his condition was brought on or otherwise induced by any act or acts constituting human rights violations, the Commission cannot be of any assistance to him.

Reference 213 - 0.01% Coverage

Samuel Amponsah Fordwoo re Ex WOI Fordwoo was discharged from Ghana Army in 1979 but petitioner claims Ex WOI Fordwoo was on duty on the 4th of June 1979 and had his human rights violated.

Reference 214 - 0.01% Coverage

1.0.2 In the course of their existence, Security Services have been responsible for the perpetration of human rights abuses and violations. These events have occurred mainly in the course of their involvement in national politics.

1.0.3 The Commission examined the role, if any, played by the Security Services in human rights violations and abuses, during the period between 6th March, 1957 and 6th, January, 1993. In this chapter, the term "Security Services" has been used to describe the following institutions:

Reference 215 - 0.01% Coverage

1.0.4 In the main, however, references to "Security Services" mean the first two institutions. Other agencies now recognised as part of the Security Services namely, Fire Service, Customs Excise and Preventive Service (CEPS) and Ghana Immigration Service (GIS) are not included in this chapter because there was no evidence before the Commission of their involvement in human rights violations or abuses within the mandate period.

Reference 216 - 0.01% Coverage

1.2.2.1 During training, there was emphasis on normal military training, but nothing on political education, civic education, nor any exposure to International Conventions such as the Geneva Convention, and other United Nations Conventions on Humanitarian Law as well as the Law of War in general. The result of this lop-sided training was that soldiers did not have sufficient exposure to the kind of education that made them conscious of the human rights issues involved in their work.

Reference 217 - 0.01% Coverage

It is against the backdrop of the performance of these statutory functions, that various of human rights violations and abuses were committed by or against police personnel.

Reference 218 - 0.02% Coverage

1.4.4.3 The basic police recruit training curriculum, rules and regulations and procedures inherited from the British remained without any significant change in form or content when Ghanaian officers took over. There were few changes in the curriculum without any emphasis on human rights training. Police officers are first and foremost citizens who must equally enjoy rights/freedoms such as human dignity, freedom of speech, right to life, non-discrimination, etc with other citizens. But the training and orientation of police officers have not seriously taken into account the rights/freedoms of individual officers. At the training schools, male recruits have their heads shaven completely and wear dresses that expose them to environmental hazards. They are trained to obey instructions from their seniors even though the oath of office taken by the recruit on enlistment binds him or her to faithfully obey lawful commands only. Classrooms, hostels and barracks were constructed in such manner that there is little room for enough space and ventilation. These places are always crammed, especially the hostels, to such an extent that some recruits sleep outside during the night to enjoy fresh air. Under these circumstances, recruits were exposed to health hazards like malaria and other diseases.

1.4.4.4 The dehumanising conditions under which recruits are trained, with little regard for their rights/liberties often ended in developing in them a mindset which is anti-human rights. Thus, as they enter the field as fresh constables with enormous police powers and authority, they have little regard for citizen's rights and liberties. Bullying in training institutions that nurtures a culture of intimidation, unconsciously inculcates in recruits a culture of abuse of power that is carried along after graduation into active service.

Reference 219 - 0.01% Coverage

1.6.1.2 As a result of the history of political detentions, the service has acquired an unsavoury image and reputation in matters of human rights.⁹

Reference 220 - 0.01% Coverage

1.6.2.3 During the 1980s the Directors of Prisons were drawn from the military, rather than using persons who had been trained as prison officers. This affected morale as it reinforced notions of institutional inferiority and impeded career progression within the Prisons Service. In addition, the Military Officers, coming from a tradition with different perspectives on human rights, could not be expected to appreciate the difference between an ordinary prisoner and a prisoner-of-war and their concomitant rights.

Reference 221 - 0.01% Coverage

1.6.4.3 There are no facilities for training officers for the senior ranks. Therefore the same facilities are used for both Superior Officers and subordinate officers. On occasion, arrangements are made to train superior officers at the MATS. This training has serious implications for the person's appreciation of the institutional identity of the service, and the relevant human rights perspectives.

Reference 222 - 0.01% Coverage

1.10.1 The Security Services perverted their primary roles and functions as set down in the 1960, 1969 and 1979 Republican Constitution as well as their governing Rules and Regulations, by becoming involved in the politics of this country. This involvement contravened the code of ethics and the very essence of the institutions, and has had the result of disorganising the structures and culture of these services, as well as undermining their image and functioning capabilities. In addition to these problems, the exercise of unbridled power enabled them to exploit the citizenry and to perpetrate acts that constituted gross human rights violations and abuses against the populace in general, and even against some of their own service personnel in particular in pursuance of their personal ambitions and political goals.

Reference 223 - 0.01% Coverage

1.10.4 There is abundant evidence to show that the forcible and unauthorised interruptions by the security services in government have adversely affected the development of the nation. Citizens were traumatised by the total disregard for their human rights when they were brutalised by members of the security services. By the end of the rule of the military governments, they stood accused of perpetrating the same kinds of malfeasance in governance, as the governments they had overthrown.

Reference 224 - 0.01% Coverage

1.12.6 Some officers were no exception to the lack of knowledge in human rights. As a result, during military coups or "revolutions" civilians and to some extent soldiers and officers who were suspected to have committed crimes, were tortured, mishandled and beaten to the extent that some victims died, or became disabled for life. Under the PNDC regime, the spate of unlawful arrests, extortion, torture, brutality, swoops, arrests, round-ups of people, irresponsible use of firearms and deadly force and other strong-arm tactics used by the military, increased. These acts occurred, ostensibly, in "defence of the revolution", and have culminated in the negative image the GAF has in the eyes of civilians.

Reference 225 - 0.01% Coverage

1.13.2 None of the civilian and military regimes during the mandate period, made any serious attempt to provide mechanisms that would enable the service to exercise its functions in the society efficiently and honestly, while respecting individual dignity, rights and liberties. The basic police recruit training curriculum, rules and regulations and procedures inherited from the British remained without any significant change in form or content, especially as regards human rights education.

Reference 226 - 0.01% Coverage

HUMAN RIGHTS VIOLATIONS AND ABUSES AND THE SECURITY SERVICES DURING THE VARIOUS REGIMES

Reference 227 - 0.01% Coverage

1.14.3.5 Thus civilians and members of the Security Services alike became victims of gross human rights violations. Between November, 1958, and 23rd February, 1966, hundreds of Ghanaians across the length and breadth of the country, suffered detention under the PDA. This in turn created fear, suspicion and insecurity among the citizenry.

Reference 228 - 0.01% Coverage

factors that led to the coup d'état.²⁰ This abrupt termination of their careers was a violation of the human rights of the two military chiefs.

Reference 229 - 0.01% Coverage

1.14.5.4 He established the PDD and POGR, who were primarily responsible for his security and protection. The existence of these two units, better resourced and therefore better motivated than their colleagues in the regular security services, created disaffection. This situation explained the extent of human rights violations and abuses to which they were subjected when the government was overthrown in February, 1966.

Reference 230 - 0.01% Coverage

1.15.15 The members of the PDD became the targets for human rights abuse by the regular security services in a move to avenge the neglect the latter had suffered at the expense of the former under President Nkrumah. It is reported that they mounted the strongest resistance to the attacking forces on 24th February, 1966. According to Afrifa,

Reference 231 - 0.01% Coverage

1.17.1.2 Members of the overthrown Progress Party (PP) became targets of human rights abuse. In line with the practice established by the NLC, the NRC called its action "a revolution", and consequently suspended the 1969 Constitution; proscribed all political parties; and caused the detention of government and PP functionaries,⁴² thereby forcing some functionaries to go into exile in the neighbouring countries. ⁴³ In May, 1972, 323 persons out of the large number that had been detained after the coup were freed from custody for the reason that they were not threats to state security.⁴⁴

Reference 232 - 0.01% Coverage

1.22.2 The seizure of political power and the human rights violations committed were a total deviation from the lawful duties and functions of the security services. In the end, the leaders were consumed by the culture of violence that their involvement in politics had nurtured in the nation.

Reference 233 - 0.01% Coverage

1.23.3.1.3 Protests against these executions and other blatant violations of human rights yielded positive results as the Chairman of the AFRC announced in a dawn broadcast that there would be no more executions.

Reference 234 - 0.01% Coverage

1.23.4.3 The military as an institution also suffered a great deal. This was an uprising that had been carried out by Junior Ranks. Most of the Senior Officers were removed from their positions and humiliated. They were replaced with junior officers. In this exercise, the Command Structure was severely damaged. This also heightened the state of indiscipline and insubordination among Junior Officers and Other Ranks. There was a total breakdown of law and order. Such chaotic situation created the platform for the violation of human rights. Arbitrary arrests, tortures, beatings, killings, abductions, detentions, threats, seizure of money and personal property and other forms of violence, became frequent events, as armed soldiers left barracks and roamed the streets

Reference 235 - 0.01% Coverage

1.23.9 In their avowed effort to do a "house-cleaning" exercise, the AFRC rather promoted indiscipline and violence in the Armed Forces. The result was the breakdown of command and control leading to national insecurity and instability. Their price control activities pushed the economy into chaos and our foreign trade partners placed embargos on our trading activities. Since that fateful period, the nation has been struggling to deal with the problems of national security that were unleashed by the event. Gross human rights violations were perpetrated by the regime and subsequently the members of the Armed Forces have used their weapons to terrorize civilians.

Reference 236 - 0.01% Coverage

1.25.8.1 Perhaps one of the biggest human rights tragedies ever to have hit Ghana, was the kidnapping and murder of three High Court Judges, and a retired Army Officer, Mrs

Reference 237 - 0.01% Coverage

1.28.2 The Junior Ranks of the military were again in power, and without effective disciplinary control, they took the law into their own hands, harassed and brutalised the populace. They subjected the citizenry to gross human rights abuses that had a damaging impact on life in the country. The revolutionary organs existed within the Security Services too, and this affected Command and Control, as well as loyalty to the Republic

Reference 238 - 0.02% Coverage

2.0.1 Lawyers in the Gold Coast were in the forefront of the struggle for Independence, and dominated the first political party that initiated the movement for Independence. Consequently, members of the profession, either as Judges, or Lawyers, continued to play significant roles in national development after Independence was attained. Did these roles have a positive impact on the development of a culture of respect for human rights, or did they make a negative contribution? Did individual members of the Bench and Bar suffer any personal consequences for playing their part in national development? Could they have done more with the opportunities they were presented with during the mandate period? It was to respond to these pertinent issues that the Commission, in fulfilment of its mandate, investigated the role the Bench and the Bar may have played, either in the perpetration of human rights violations, the development of a culture of lack of respect for human rights, or in the development of a culture of resistance to violations of human rights.

2.0.2 This Chapter also documents the contribution that the introduction of a new system of adjudication, as well as new investigative bodies made to the enjoyment or otherwise of human rights by the citizenry. Since these bodies operated outside the generally accepted norms of judicial and quasi-judicial inquiry, the issue of whether these well established norms serve a purpose, is brought into focus. This Chapter also recounts some violations and abuses that members of the two groups of the Legal Profession suffered, either individually or collectively, in the course of pursuing their profession. It also sheds some light on Bench-Bar relations and what impact this has made on the nation's postIndependence history.

Reference 239 - 0.01% Coverage

2.4.4 Despite the gallant fight and wise counsel of the Members of Opposition who urged the Majority to look beyond their enemies and to see the threat that the Bill posed to the liberty of every Ghanaian, the Bill successfully went through Parliament and received the assent of the Governor-General on 18th July, 1958. Thus it was that one of the most momentous pieces of legislation affecting the human rights of the citizenry took four days from its First Reading to its receipt of the Governor-General's assent. Its enactment began a long tale of sad events.

Reference 240 - 0.01% Coverage

It is impossible to see respect for human rights and the rule of law when a man may be detained for ten years without ever being accused of any crime, let alone being tried and convicted.²⁵

Reference 241 - 0.02% Coverage

3.2 The courts appeared to have come out with conflicting views on specific issues. For instance, on whether the Habeas Corpus Act of 1816 was a statute of general application, the court had divergent views. While the court in *Re Akoto* held that it was, the court in *Re Dumoga*²⁷ held that it was not. This difference of opinion had significant importance for the applicants as it determined whether or not the court could enquire into the truth of the allegations upon which a particular detention order was based. Whilst the Court in *Re Akoto* held that, under the Habeas Corpus Act of 1816, the court was required to inquire into the truth of the grounds stated upon which the Governor-General had become satisfied that the order was necessary to prevent the appellants from acting in a manner that was prejudicial to the security of the state, the court in *Re Dumoga* held a contrary view. It stated that the Habeas Corpus Act, 1816 did not apply in Ghana and therefore the applicants were not entitled to the truth about the charges or grounds of their arrest and detention as stated in the detention order. Further, that it was not the duty of the Court to question the exercise of a discretionary power vested in an executive officer to arrest and detain persons, provided the officer had acted in good faith. The point therefore was that the right to a formal trial before imprisonment, which was a right derived from the Magna Carta and applicable to all former British subjects, as well as the Universal Declaration of Human Rights of 1948, were held not to be available to accused persons in independent Ghana.

Reference 242 - 0.01% Coverage

3.4 There is clear evidence that judges such as Chief Justice Arku Korsah, Justices Akiwumi, Simpson and van Lare, did little to discourage the Executive from violating the human rights of the citizens.

Reference 243 - 0.01% Coverage

5.1.6 There were a number of other cases on deportations that went before the courts.⁴⁰ The courts appeared to have interpreted the law to the letter without taking into consideration the spirit of the laws. The results of such interpretation were unfortunate, since the content of the legislation left a lot to be desired in the light of human rights principles. For instance, under the provisions of the Deportation Act, it was possible for an alien to be deported with his dependents. This was obviously unfair, especially when these dependents were above the age of majority. This power to deport was so wide as to be open to abuse. Such strict interpretation therefore enabled the Government to deport people who were its political opponents on grounds that they were aliens, although they insisted that they were Ghanaians.⁴¹ Indeed Bennion states that some of the deportees

Reference 244 - 0.01% Coverage

5.2.8 Sir Arku Korsah's own forced retirement also amounted to a violation of his human rights. The rights of the Judiciary as an institution were also violated, as this act attacked the integrity of the institution and also undermined the sense of security of tenure that judges should have in order to discharge their duties without fear or favour.

Reference 245 - 0.01% Coverage

10.3 The abrogation of the 1969 Constitution affected the operation of the Human Rights provisions enshrined in Article 15. In 1975, the SMC enacted an amendment to the Criminal Procedure Code, 1960, which had the effect of rendering admissible in a trial, a statement which had been obtained in breach of the right of an accused person to consult a lawyer of his choice.⁵⁵ This curtailment of the rights of an accused person was challenged in *Tinieye v. Republic*⁵⁶ at the High Court, Bolgatanga. Of the courts' role in the protection of human rights, Mr. Justice J.N.K. Taylor, echoing views reminiscent of the *Re Akoto* days of the First Republic, stated the following:

Reference 246 - 0.01% Coverage

10.4 These views had the effect of shifting the forum for the protection of human rights from the courts to the people themselves, as a basis for the exercise of their powers of sovereignty. This was somewhat disingenuous, since judges knew fully well that in theory and practice, a coup d'état has the effect of suspending the power of the people to control their rulers. In thus pushing these matters from the judicial arena to the political arena, the judges showed clearly that they did not see their institution as the bastion for the protection of the rights of the citizenry, as the tradition of the common law prescribed. Instead, they merely stood aside when called upon to intervene between the citizen and the state because it was "no concern of the courts". This attitude had ramifications for the citizenry at large, and eventually the judiciary itself, as those who stood up for the rights of the citizenry cut the image of opponents of the government, with serious consequences a few years later.

Reference 247 - 0.01% Coverage

13.3.5 Applications for habeas corpus continued to be filed by the 'AFRC Convicts' and the courts continued to handle them even though the State continued to re-state its objection. The judges were in a dilemma as the cases involved the gross violation of the human rights of the applicants. For instance, in the case of *The Republic v. Director of*

Reference 248 - 0.02% Coverage

13.3.7 During the proceedings, the evidence disclosed that the warrant of commitment was signed by a person whose real name could not be identified. However, the State raised objections to the effect that not only could the court not look beyond the warrant of commitment to determine its genuineness, but that it had no jurisdiction to even entertain the application. The court overruled the objection, stating that the Constitution had been promulgated for the good governance of the State and for the assurance of the fundamental human rights of the citizens. Consequently, this same Constitution, could not rob the citizens of those very rights. Mrs Justice Koranteng-Addow stated that, "the matter in debate is a question involving the liberty of a subject of this country, the right to personal freedom of a citizen of this country".⁶² The court also ruled that the genuineness of the warrant of commitment was important in determining whether the writ of habeas corpus would issue, as the court could not question the rightness or wrongness of the conviction by virtue of AFRC 3 and section 15(2) of the Transitional Provisions of the Constitution. However where there was a dispute about the authenticity of the warrant and the applicant gave credible evidence that it was practically impossible for him to have been tried, there was no justification for a detention and the writ could issue.

Reference 249 - 0.01% Coverage

gave presentations at which they expressed views that were critical of the PNDC. Mr Justice F.K. Apaloo, delivering the Keynote Address, expressed the view that the assumption of judicial powers by the PNDC was "dangerous and unprecedented" in the annals of Ghana's legal history. During a subsequent symposium, Mr. Justice Taylor criticised the human rights record of the AFRC and the victimisation of so-called kalabule people for the woes of the time. These views of the two Judges, were reported from the angle of comments made by Tsatsu Tsikata in his own presentation at the same symposium, which were critical of the judiciary in general, and the judges in question in particular. Under the headline "Self-contradictions of Judiciary Exposed", the newspaper presented their judicial history in an unflattering light, thereby presenting the Judges' criticisms as hypocritical and anti-PNDC.⁸⁵

Reference 250 - 0.01% Coverage

19.1.4 It is also interesting to note that the People's Daily Graphic of 4th April, 1986, stated expressly that the PNDC took this decision in consultation with the Chief Justice. If indeed there was proper consultation, then the implication was that the Chief Justice, the highest judicial officer of the land, took part in perpetrating gross human rights violations against some of his own colleagues. Whatever the circumstance, there is no doubt that what took place was an attack on the judiciary by the Executive.

Reference 251 - 0.01% Coverage

108 H.J.A.N. Mensa-Bonsu, "The Public Tribunal System And the Human Rights Regime" in The Judicial System And The Protection Of Human Rights In Ghana E.K.Quashigah, (ed) Human Rights Study Centre, Faculty of Law, University of Ghana, Legon and Konrad-Adenauer Foundation Of Germany, Accra, 1994. 109GBA Annual General Conference, Statement on Public Tribunals, 13th January, 1984. 110 Ghanaian Times vol. 7712 Saturday, 9th October, 1982, p.1. 111Ghanaian Times vol. 7,721 Wednesday, 20th October, 1982.

Reference 252 - 0.01% Coverage

112 Daily Graphic vol 9977, Saturday, 4th December, 1982. The accused in the case, J. K Ampah collapsed and died when his pace-maker failed, in the course of testifying on this event in his petition before the Commission on 5th June 2003. 113 C. Flinterman, "Human Rights in Ghana" S.I.M.Special No.4 International Commission of Jurists and Netherlands Commission on Human Rights, 1985 114 PNDCL78, para 19(4).

Reference 253 - 0.01% Coverage

26.1 The Legal Profession, has during its existence, found itself called upon to protect the fundamental human rights of the citizens, or, at least, to prevent state-sponsored human rights violations. This has been the norm, particularly during periods of nonconstitutional governments, because:

(1) often it was lawyers who understood new legislation and the threats they posed to the enjoyment of fundamental human rights; and

Reference 254 - 0.01% Coverage

Through the medium of Press Statements and Resolutions adopted at the Annual Conferences of the GBA, lawyers brought their influence to bear upon issues of national governance, including the human rights of the citizenry.

Reference 255 - 0.01% Coverage

26.4 Individual members of the legal profession have also been at the forefront in designing and implementing repressive measures against the citizenry. Consequently, they have also been responsible for some of the human rights violations that were perpetrated during the mandate period.

Reference 256 - 0.01% Coverage

27.2 Soon after the first detentions under the PDA were effected, Dr. Joseph Boakye Danquah, a prominent lawyer and later, President of the GBA, began to fight through the courts for the PDA to be repealed because of its repressive nature. He took various habeas corpus applications to the courts, culminating in the decision in *Re Akoto* when the courts ruled that it was not the proper forum for the enforcement of the Declarations on Human Rights that the President of Ghana had been required to make before the National Assembly, under the Republican Constitution.

27.3 Eventually, Dr. Danquah had to make the supreme sacrifice in the course of his fight against oppression, dictatorship and the denial of fundamental human rights when he and Koi Larbi, another lawyer, most associated with the defence of detainees and deportees, were themselves detained. Their detention made it impossible for detainees to secure legal counsel.

Reference 257 - 0.01% Coverage

33.3 In March, 1985, the GBA protested the starving of the judicial system of funds and material resources, and the consequent deterioration of facilities and services in the regular courts; the "abject squalor, degradation and dehumanizing conditions in most prisons, police cells and other places of confinement"; and the "inadequate clothing of many indigent prisoners and others in detention."¹⁴¹ The resolution also announced the establishment of a Human Rights Fund to support the families of persons detained without trial.

Reference 258 - 0.01% Coverage

36.8 Another Association was formed, known as Ghana Association of Democratic Lawyers (GADL) with George Agyekum and Kwaku Gyan as Chairman and General Secretary respectively. These gentlemen were, incidentally, also officials of the Public Tribunals system. Although named as an association of lawyers, it also had a number of non-lawyers as members, and one of its objects was to dedicate itself to the promotion of human rights. Under the auspices of the GADL, a British Lawyer, Lord Guildford, came into the country to give a series of lectures, urging Ghanaian lawyers to free their minds

Reference 259 - 0.01% Coverage

"Human Rights In Africa", the Conference was expecting delegates from all over Africa. By the time of the ban, some of the delegates had already arrived in Ghana. Despite the best efforts of the GBA, the government would not relent and the GBA incurred a lot of

Reference 260 - 0.01% Coverage

37.5 The GBA was subjected to heavy criticism in the media, with the accusation that it wanted to use the ABA Conference to destabilise the PNDC. Official denials to the media from the President, Peter Ala Adjetey, were never published. Perhaps, a discussion on human rights by the ABA, to whom an unfulfilled promise had been given in 1982 that the families of the murdered Judges would be compensated, made the government uneasy.

Reference 261 - 0.01% Coverage

38.3 Some individual lawyers, such as Ray Kakrabah-Quarshie, offered free legal services to detainees and other persons suffering human rights abuses under the PNDC.

38.4 In 1987, the GBA initiated discussions on various human rights issues with the Attorney-General and Secretary for Justice on issues of the administration of Justice. It also held discussions with the Acting Secretary for the Interior and the Acting Director of Ghana Prisons Service. At these discussions, the GBA complained about the number of police checkpoints and barriers in the country, that affected the citizens' right to freely move about; the illegal activities of members of the Civil Defence Organisation (CDO) and the need to contain their revolutionary zeal; the appalling state of facilities in the country's prisons; and the need to set up a Parole Board.¹⁵⁴

Reference 262 - 0.01% Coverage

40.1 Military regimes have also benefited from the support of the GBA, especially, when they were believed to have ended a rule of tyranny. This support ended up making the Association and the particular lawyers complicit in the human rights violations that were perpetrated under that regime. For instance, in 1966, Victor Owusu, then President of the GBA was drafted into its fold by the NLC, and he became its Attorney-General. He thus became complicit in the human rights violations such as the enactment and implementation of the Protective Custody law; the banning of the CPP; the banning of CPP activists and functionaries from offices in the Public Service, the detention of those accused of jubiling upon the killing of Lt Gen E.K. Kotoka in 1967, etc. In 1972, E.N.Moore, then President of the GBA joined in with the NRC and became its AttorneyGeneral and in 1979, W. Adumoah-Bossman, then President of the GBA joined the AFRC, as a legal advisor.

Reference 263 - 0.01% Coverage

40.6 There are instances where some military regimes established quasi-judicial or other bodies that could exercise judicial power, without a right of appeal. The legislative purpose or intent of these bodies was to perpetrate human rights violations against perceived political opponents. Members of these bodies were in most cases, lawyers of considerable experience at the Bar. In spite of the knowledge that the members of the Legal Profession had about human rights principles and the need to uphold them at all times, they accepted these positions in the name of "service to the nation," thereby selling their conscience and services in order to help some self-seeking politicians and military adventurists to perpetuate human rights violations.¹⁵⁹

Reference 264 - 0.01% Coverage

41.1 The Bench in its decisions played a significant role in the development of a culture of human rights violations in the history of this country. Individual members of the Judiciary had their rights abused, and the Judiciary was unable to protect itself from Executive interference with its work. This was seen in the instances in which when some judges were dismissed for no tangible reason and without adherence to due process, other judges accepted new appointments with no hesitation, to replace the dismissed judges. In the case of the interpretation of human rights-related legislation such as the Preventive Detention Act, judges have consistently adopted a narrow positivist approach that supported the position of the Executive and deprived the citizenry of their human rights. This failure to hold the balance between the individual and the State, and undue deference to the Executive for reasons of self-preservation, resulted in widespread and unchecked violations of human rights of the citizenry, and produced some of the most terrible instances of the impact of an unrestrained use of Executive power, on the lives of ordinary people.

Reference 265 - 0.01% Coverage

41.2 Some judges were also bold in their decisions thus upholding the principles of human rights. There was also overwhelming evidence that the Executive did interfere in the work of the Judiciary and this appears to have influenced the role played by the Judiciary in their inability to uphold the rights of the individual.

41.3 The GBA also played a significant role in upholding the human rights of the citizenry by speaking against violations. At the same time, individual members of the Bar accepted appointments by military regimes and assisted them to draft Decrees to support the usurpation of power. Some of these Decrees clearly violated the human rights of the citizenry, and others became the means by which human rights were denied to some citizens. Lawyers were the ones who ensured that the courts would be deprived of power to review the actions of military rulers that violated the rights of the citizenry.

41.4 Some lawyers were also martyred for the cause of the protection of the human rights of the citizenry. At great cost to themselves, some took on unpopular causes for indigent clients pro bono, and their contribution must be appropriately acknowledged.

Reference 266 - 0.01% Coverage

CHAPTER THREE THE MEDIA AND HUMAN RIGHTS IN GHANA 3.0 INTRODUCTION

Reference 267 - 0.01% Coverage

3.0.2 The propensity to adapt and bend to the will of governments underpins media complicity in some of the human rights violations and abuses that have taken place under various regimes in Ghana. Experience shows that the first action of most military juntas is to take over media organisations, because they see the media as perfect tools to propagate the political and ideological objectives of their new regime. Thus as an institution, the media have played a legitimacy role in helping various Ghanaian administrations perpetuate their rule, however unpopular.² George Agyekum, who chaired the National Public Tribunals from 1984-1993, underscores this point when he notes:

Reference 268 - 0.01% Coverage

3.0.3 The sources of information for this report were: newspapers of the mandate period, memoranda from media practitioners, focus group discussions with journalists, published literature and other secondary sources. These have been helpful in illuminating the various ways in which media were complicit in, or resisted human rights abuses and repression throughout much of Ghana's post independence history.

Reference 269 - 0.01% Coverage

3.0.7 The discussion of the media under the post-independence government of Dr. Nkrumah and the CPP is significant, particularly for a proper understanding and appreciation of the pattern of coercion, co-optation and resistance to government that has characterized the entire history of the media during the mandate period. As noted by a former employee of GBC, there were "stressful conditions imposed on the people who worked at the GBC from the First Republic to the end of the PNDC regime."⁴ According to him, harassment, intimidation and interference in the work of professional broadcasters have been common violations of human rights by both military and civilian governments in Ghana.

Reference 270 - 0.01% Coverage

Times, was echoing on its pages the reservations of the government of the day. Clearly, as demonstrated in the cited examples, the media lent legitimacy to the regime of the NLC and to its human rights violations through their reportage. In their editorial columns, they rationalised the actions of the government, no matter how questionable, and offered very little criticism of, and resistance to, the regime.

Reference 271 - 0.01% Coverage

3.4.2.6 The press also showed ordinary civilians being "disciplined" by the military and drilled by members of the government, such as Col Bernasko. In this sense they appeared to be overtly supporting the abuse of the human rights of citizens.

Reference 272 - 0.01% Coverage

regimes, the NRC has bent over backwards to preserve fundamental human rights. Sometimes they have been accused of being over cautious; but they themselves have taken the view that it is better to let nine guilty men escape than to incarcerate one innocent man unjustifiably.⁹⁸

Reference 273 - 0.01% Coverage

3.7.2.5 The initial restraint and unenthusiastic support for the new regime displayed by newspapers during this period was severely contradicted by the most disturbing endorsements of gross human rights abuses ever manifested in the Ghanaian media. Under the caption, "A Lesson To All Ghanaians", the Daily Graphic¹⁴⁹ welcomed the

Reference 274 - 0.01% Coverage

3.7.2.6 Often newspapers depicted through words and pictures the human rights abuses meted out on the citizens of the country, but failed to criticise or condemn such abuses. Indeed, the framing of stories suggested that the press endorsed some of the junta's harsh measures. Even before the public executions of alleged economic and other saboteurs started, the Ghanaian Times, for example, showed pictures of the Teshie Firing Range and another one at Sunyani, being prepared for those who would be brought to the stakes.¹⁵³ The paper enhanced its endorsement of human rights abuses with pictures and sensational headlines. Some of the headlines of the articles that carried the reports were:

Reference 275 - 0.01% Coverage

3.9.1.4 It is striking and telling that copies of newspapers during the first year in office of the PNDC are virtually unavailable. For inexplicable reasons depositories in Ghana, including the national archives, and public libraries do not have issues of state newspapers published in 1982 that would have illuminated better issues relating to the press and the PNDC Government in the early days of the PNDC government. By most accounts, however, the PNDC government had the worst record of human rights abuses, including abuses against the media. The fact that newspapers appear to have been removed from national depositories, is itself suggestive of an agenda by persons unknown to tamper with the record of available information on the first year of the PNDC. This is even more significant, viewed against the background that electronic recordings of that period were lost in the fire that engulfed GBC's library in the late 1980s.

Reference 276 - 0.01% Coverage

3.9.3.3 Another journalist also testified to instances of human rights abuses against GBC workers.¹⁷⁶ According to him, journalists in the news division of the GBC:

Reference 277 - 0.02% Coverage

3.9.3.13 In June, 1985, Flt Lt Rawlings verbally attacked the Catholic Church, at a function to commission new transmitters for the GBC and in December that year his government banned the *The Standard*, a weekly publication of the Catholic Church, for its critical news stories and comments against the government. The newspaper, among other things, had criticised the PNDC's human rights record and had called for the democratisation of government in Ghana. The PNDC claimed the newspaper was banned for its "unpatriotic reporting." A lead article on the front page of the 3rd February, 1985 issue of *The Standard*, for example, had criticised the government for pursuing traditional economic policies which called for an over reliance on foreign investments and loans and a commitment to IMF. The article also condemned the creation of the Committees for the Defence of the Revolution (CDRs) and the Joint Consultative Committees (JCCs). It complained that these organs undermined the structural basis of workers' and the people's power. The *Standard* summed up general frustration with military regimes by noting in one of its articles, "Military interventions or military bullyism is the one curse which has bedevilled this nation..."¹⁸³

3.9.3.14 An editorial in the same issue of The Standard, added its voice to a communiqué of the GBA on human rights abuses going on in the country.¹⁸⁴ Another editorial of The Standard in June, 1985, among other things, criticised the execution of some persons for embezzlement of funds from a bank, and stated that executions were not the sole answers to economic ills. An issue of the paper even went as far as to carry a news flash that challenged why some political detainees had been released on bail and not Kankam da Costa, the former Central Regional Minister. This news flash was repeated in subsequent issues of the paper.

Reference 278 - 0.01% Coverage

3.9.3.19 As it had done in previous regimes, therefore, the state dailies under the PNDC government gave their unflinching and uncritical support to the regime and made little attempt to criticise government's human rights abuses and excesses. This status quo was maintained even after the Rawlings regime lifted restrictions on the press and the ban on political parties, as a prelude to democratic rule.

Reference 279 - 0.01% Coverage

3.9.4.3 The Free Press, owned by Tommy Thompson, The Standard and the Christian Messenger stand out as consistent critics of the abuses and wrongdoings occurring during the period of PNDC rule. Some of their critical articles have already been noted. The Christian Messenger, for example, carried a headline to a lead article in its January, 1984, that the "Revolution Cannot Succeed With Violence: Christian Council tells PNDC." The article said the Christian Council of Ghana was concerned about the "violence, hatred, human suffering, fear and flagrant violations of human rights that have characterized the two-year rule of the Provisional National Defence Council PNDC." It must be noted, however, an editorial comment in the same issue praised the manner in which the public tribunals, had dealt with the detractors and saboteurs of the revolution. On another occasion, a front-page lead article in the June 1984 edition of the Christian Messenger also carried a critical headline: "'Human Rights Are Being Violated,' says Christian Council". The article criticised the PNDC regime for its record of disquieting violations of human rights especially the kidnapping and murder of the three High Court Judges and a retired Army Officer.

Reference 280 - 0.01% Coverage

3.10.3 Media, no doubt, constitute an important battleground in the hegemonic process mostly because they are often one of the key agents which articulate the interests of the dominant class/group in society.²⁰⁰ This perspective on the media is helpful in understanding why and how they played a legitimising role during various regimes that have taken over power through the barrel of the gun in Ghana; how they lent tacit or overt support to human rights abuses that occurred when those regimes were in power; and how the editors abused the control over their pages or airtime, to violate the rights of other citizens.

Reference 281 - 0.01% Coverage

1. villification of constitutional governments; 2. extolling the courage of the new military regime; 3. de-legitimisation and demonisation of the overthrown constitutional government; 4. validation of actions of the new regime, including human rights violations and abuses by the new regime, through rationalisation and extolling magnanimity that had been displayed by the regime;

Reference 282 - 0.01% Coverage

hardly ever criticised. State media and sometimes private media rationalised policies – good or bad – of the different military regimes, and were in many ways accomplices in the victimisation of people. Even Christian faith-based newspapers, such as The Standard and Christian Messenger, were swept up in the euphoria that greeted some military regimes and often did not condemn human rights abuses perpetrated by them.

Reference 283 - 0.04% Coverage

throughout most of the period under review, at times risking their newspapers and personal liberties by taking a stand against human rights abuses.

3.10.10 The legacy of Ghana's illiberal, sometimes brutal socio-political history, has been a media with stunted growth; a media in which journalists, particularly of the state-owned media, have developed a culture of self-censorship and where the media in general, still show a tendency to be sycophantic to governments as well as various centres of power. Coercion, co-optation and corruption of the media by various governments, resulted in the fragmentation of the press along political lines, with many journalists pursuing their private agenda not necessarily for the public good, but for the attainment of factional and parochial goals. This legacy is hard to overcome even in a democratic era. Journalists are still likely to undermine each other and are not as sensitised to human rights abuses and violations as they ought to be. Relations remain polarised between journalists of the state-owned media, and those in the privately owned sector. The former views the latter with suspicion as "largely untrained" and lacking appropriate professional skills, and the latter views the former as lacking courage to be critical of government. Hard to change is the habit of settling old and personal scores, and even at the present time, it is not uncommon to hear of people being "fixed" in the media.

3.10.11 Surprisingly, despite the abundance of evidence to suggest that the media themselves are culpable in undermining democracy and human rights, it is often only their acts of valour that are publicly discussed. The media by their actions and inactions have sometimes encouraged would-be coup-makers to initiate action against lawfully established governments. The media, during periods of constitutional rule, often painted such gloomy pictures about the state of the economy, in comparison with the level of ostentatious living being indulged in by members of constitutional governments. These pictures undermined the loyalty of the citizenry to the constitutional government. For instance, there was a hue and cry over 504 Peugeot cars imported for sale to Members of Parliament during the Third Republic, as being over-indulgence in luxury. Yet, upon the overthrow of that government, there was never a whimper about the Nissan Stanzas and Four-wheel Drives that became the official vehicles of political office-holders. Again, during periods of constitutional rule, journalists subjected the government to such criticism that they ended up creating the impression that nothing good would come of a constitutional government because of the slowness of processes. However, without leading the public to appreciate that constitutionalism dictated compliance with requirements of legality, the public soon lost patience with civilian rulers. Yet, nonconstitutional governments are the ones, whose lack of compliance with legal requirements, have ended up creating major human rights violations and abuse for the country. All these unappealing images cultivated by the media, have helped to prepare the ground for usurpers to step in, and use the media-led complaints as the justification for the seizure of power.

Reference 284 - 0.01% Coverage

3.10.13 Considering that the media are expected to be facilitators of the process of truth and reconciliation, it is important that journalists, collectively and individually examine some of the past actions of the media, in order to better understand the role the media have wittingly or unwittingly played

in the country's noble and ignoble history. There is a need to recognise and acknowledge their role in promoting a culture of human rights abuse, as well as their role in helping to nurture a culture of respect for human rights and dignity. This is what would enable the media to spearhead the process of their own institutional re-invention, improve their capacity to champion the cause of human rights, and thereby prevent future governments from using them to legitimize their actions.

Reference 285 - 0.01% Coverage

5.0.1 In reporting on the human rights violations and abuses that occurred during the mandate period, the Commission considered whether or not professional associations and other civil society groups had contributed to the violation or the protection of individual human rights. The scope of this chapter is restricted to the activities of the Association of Recognised Professional Bodies (ARPB), as well as those voluntary and/or political associations that had an impact on the human rights landscape. Consequently, the Commission did not study all political parties, nor all civil society groups ever formed in Ghana. The groups concerned are professional bodies (other than legal) and other civil society groups.

5.0.2 The Commission believes that a study of the activities of these movements during the mandate period would enable the nation appreciate their importance in the sociopolitical history of Ghana; be provided with the reasons for change or continuity in these movements; understand why the movements underwent a transformation or ceased to exist altogether, and above all assess their impact on the development or otherwise of a culture of respect for human rights.

Reference 286 - 0.01% Coverage

5.3.1.2 This group, re-named the Legon Society on National Affairs (LSNA), played a human rights advocacy role through its mouthpiece, The Legon Observer. This was its official platform, although very often, it was individual members of the LSNA who protested human rights abuses by the NLC. During this period the official body of university teachers, University Teachers Association of Ghana (UTAG), confined itself to its trade union functions.

5.3.1.3 The LSNA made a "vow" to the nation that it was resolved "to give loyal support to the NLC" in its drive to consolidate freedom and democracy in the country. Though the LSNA was critical of certain NLC policies, its avowed opposition to the CPP compromised its ability to protest at the serious infringements on the human rights of CPP officials and activists.

Reference 287 - 0.01% Coverage

5.5.1.1 The direct involvement of professional bodies in Ghanaian politics can be dated to the 1970s. In the 1970s, their engagement in politics became pronounced when the economy of the country began to show signs of collapse, as a result of misrule and mismanagement of the military rulers. The return of the country to constitutional or civilian rule became the dominant objective, obscuring any other concerns. Before this time, involvement in Ghanaian politics had been the province of individuals (professional or not) and private (non-professional) associations, who would comment on human rights issues selectively and periodically. In general the professional groups, whose members constituted the cream of Ghanaian society, showed the same attribute as the general population, in terms of the lack of appreciation of the intrinsic value of human rights, and of the need for commitment to defend and promote the enjoyment of human rights for all persons.

Reference 288 - 0.01% Coverage

5.7.8 The short AFRC tenure graphically illustrated this lack of human rights culture that would move individuals and groups to struggle in defence of human rights. In other instances, the elites led the entire country to condone human rights violations. The leaders of the registered political parties, then engaged in electoral contest for power, were seemingly concerned more about securing the transition programme so that power would be transferred to one of them. The widespread human rights abuses that were committed by the AFRC appeared not to be their primary concern, until after the first round of the elections, when the top five political parties issued a joint statement expressing concern about the executions. They also urged the government to uphold the rule of law in all cases where a crime was alleged to have been committed.

Reference 289 - 0.02% Coverage

5.9.1 The Provisional National Defence Council (PNDC) came to power on 31st December, 1981, after a coup d'état led by Flt Lt Jerry John Rawlings, who became Chairman of PNDC and Head of State. There were human rights abuses during the PNDC era. People were assaulted, brutalized, maimed, imprisoned, abducted and killed. Others had their properties seized, vandalized or confiscated. In fact the PNDC period was a period of lawlessness, when the rule of law had completely broken down in the Ghanaian society, and citizens' rights, freedom and liberties were thus taken away from them.

5.9.2 Under the PNDC, when some of the most heinous crimes were committed against fellow Ghanaians, the lack of a culture of human rights struggle, became very obvious. In 1982, resistance to the PNDC by the GBA²³ and ARPB was driven as much by the demand for the restoration of constitutional rule, as by a commitment to defend human rights, although the struggle was not couched in human rights language. Gross human rights violations took place, and were rampant. The murder of the three High Court Judges and a retired Army Officer, shook the rank and file of Ghanaian citizenry, as much because of the gruesome nature of the killings, as by the fact that Ghanaians deeply valued the sanctity of life. However, those horrendous acts could not ignite a movement to stop further human rights abuses, even though the protests and condemnations by the ARPB, religious and other civic bodies were loud and consistent.

Reference 290 - 0.01% Coverage

Since the 31st December 1981, the law of the jungle has taken over a once decent and law abiding people of Ghana. Law and order has broken down and there is callous disregard for Human Rights and Fundamental Freedoms.²⁵

Reference 291 - 0.01% Coverage

5.16.5.9 The banning of the old political parties and the prohibition of the use of their symbols under the Political Parties Law, was seen by the leaders of the new political parties as a violation of the fundamental human rights, in particular, freedom of association. They therefore decided to contest the issue in court, and 29 persons, all leaders of the opposition, joined in the suit. They were led by K A Gbedemah, and

Reference 292 - 0.01% Coverage

included such prominent politicians as B.J. da Rocha, Dr. Hilla Limann, and Professor A. Adu Boahen.¹²⁶ They sought a declaration that the Political Parties Law as published by the PNDC was a violation of the fundamental human rights of freedom of association of Ghanaians.

Reference 293 - 0.03% Coverage

5.17.1 Apart from a few which were formed between 1958 and 1968, most Professional Bodies (other than legal) and Civil Society Groups were formed in the 1970s and later. Professional Bodies and Civil Society Organizations are generally expected, by virtue of their learning and expertise, to be more concerned about and more actively involved in human rights issues and, therefore, spearhead the fight against human rights violations and abuses.

5.17.2 Admittedly, some voices were raised by some of the Professional Bodies and Civil Society organizations at gross human rights violations and abuses during the mandate period. However, these were too feeble, too sporadic and too disjointed to make the desired impact on society, because it was generally felt by professionals that human rights issues are the preserve of political parties and that politics was a vocation that could not be mixed with one's professional practice. Thus, the culture of respect for, and tutelage of human rights per se was hardly one of the objects of the Professional Bodies and Civil Society organizations dealt with in this chapter.

5.17.3 Evidence shows the Professional Bodies (as represented by the ARPB), and the Civil Society Organizations, were very active in the fight for constitutional governance, in particular, during the latter days of the SMC I, through the short-lived SMC II, the AFRC days and finally, during the PNDC regime. The ARPB deserves commendation; it was the loudest voice of opposition, at the time, to unconstitutionality, which was and gave rise to several gross violations and abuses of the human rights of the citizenry

5.17.4 Professional Bodies should not confine themselves to the pecuniary interests of their respective associations alone, but also avail themselves of the opportunity to make human rights interventions when necessary. They should make human rights education and protection an integral part of their professional responsibility and ethics.

5.17.5 Of the four Civil Society Organizations that sprang from the roots of the AFRC Revolution that are discussed in this chapter, only the MFJ was anti-PNDC right from its inception. The others, NDM, KNRG and DWM were overtly pro-PNDC, and therefore saw nothing wrong vis-à-vis human rights issues of the regime. Their concerns were merely ideological, or were focused on widening the support base for the PNDC, and could not be said to have championed human rights issues per se.

Reference 294 - 0.03% Coverage

5.17.7 During the mandate period, political parties however, had a lot to do either defending human rights or violating them or even condoning with their violations and abuse. In the pre-Independence period, political associations and groupings were themselves founded, based inadvertently or otherwise, on considerations that promoted one abuse or the other of human and social rights. They were mostly founded on ethnic or religious or regional affiliations. Only later, were those ethnic – religion – regionbased political associations compelled by law to team up and form an opposition that was nationalist in aspect. This was good for the promotion of a sense of nationhood, in a newly-independent country.

5.17.8 Throughout the mandate period, however, the two main political traditions, namely, the CPP and the UP took turns in violating and abusing the human rights of sections of the citizenry, or in condoning violations and abuses as and when they (the parties) were in power or were allied with the military regime that had usurped constitutional governance. Thus, one cannot say of the political parties that they pursued an agenda of championing human rights. Indeed, when in power, they abused and violated them and seemed insensitive to the human rights of those supposedly in opposition.

5.17.9 Invariably, these political parties and their membership too suffered violations and abuses of their human and institutional rights, whenever their governments were ousted in the military take-overs that characterized the mandate period. The power to suppress the human rights of the opponent, was seen as one of the spoils of victory over the opponent.

5.17.10 All said and done, there was not, indeed, a good or even fair sense of the notion of fighting human rights causes, let alone their respect and support among the elite, the leadership and practitioners of party politics. This is a serious shortcoming that calls for remedial action. There is the need to inculcate into the rank and file of the citizenry and also into institutions and organizations such as Professional Bodies and Civil Society Organizations, the need to champion, and so develop the culture of respect for the human and civil rights of all.

Reference 295 - 0.01% Coverage

5.17.13 Civil Society must take its share of the blame in the events that have produced massive human rights abuses in the country. It must now be appreciated by all, that taking to the streets and dancing to welcome a usurper, has always been the first step towards condoning, and even giving approval to, all human rights abuses committed by a particular regime. The need to know, respect, uphold and defend human rights is of paramount importance in the march for peace, freedom and justice.

Reference 296 - 0.01% Coverage

6.0.1 The Commission set out to examine the socio-political environment within which human rights abuses have occurred within the mandate period, and the role played by students, organized as political party wings on the campuses, as Student Representative Councils (SRCs), or as a movement known as the National Union of Ghana Students (NUGS). This chapter has chronicled the activities of the student movements during the mandate period, and has thrown some light on the experiences of their leaders and other prominent activists, either when the patron-governments were overthrown, or because their activities were a challenge to the sitting government. The Commission did not include in its focus of study, movements on the student-front that were not of political significance.

Reference 297 - 0.01% Coverage

6.7.2.8 On Saturday, 30th June, the Chairman of the AFRC, Flt Lt Rawlings, in a dawn broadcast, informed the nation and "friends of Ghana" that there would be no more executions of people convicted by the Special Courts of the AFRC. Instead, such persons would be sentenced to penal servitude on penal farms and their properties confiscated. Flt Lt Rawlings stated that the AFRC "had taken note of the special appeals for restraint from the world community especially those from sister African states". He assured Ghana's friends that Ghana had not abandoned the rule of law and its adherence to the principles of United Nations Declarations on Human Rights, but appealed to them to understand Ghana's peculiar situation. He also appealed to Ghanaians to understand the situation.

Reference 298 - 0.01% Coverage

6.7.3.4 At the British High Commission and the American Embassy, the national flags of the two countries were torn into shreds. The students in their protest note addressed to Her Majesty Queen Elizabeth II through the British High Commissioner, stated that from recent developments, they were convinced that the British government decided to accord recognition to the AFRC in order to protect its trade links with Ghana. They also pointed out that they believed Britain's protestations about human rights in Ghana were meaningless since the protest was not backed by action to meet the basic needs of the people in terms of food, housing, clothing, transport and education. The students also drew the attention of the British Government to their own acts of oppression of human rights in Northern Ireland, Nigeria, South Africa and Rhodesia. Although the demonstration was described as peaceful and decent by Edward Holmes,

Chargé d’Affaires at the American Embassy, his only regret was that the students had torn the American flag into pieces.

Reference 299 - 0.01% Coverage

6.9.4.23 A few months later, NUGS joined a group known as the Coordinating Committee of Democratic Forces (CCDF) that organized press conferences, beginning from 6th August 1991, to take a stand on the need for a return to civilian rule. The group was said to be open to “all independent organizations that stand for multiparty democracy, respect for fundamental human rights, the rule of law and the sovereignty of the people of Ghana.”¹⁶³(emphases in original). The need to form the group was made manifest “by the continued intransigence of the PNDC in the face of popular and democratic demands and by the need to unite all democratic forces to press forward, with greater effect, the struggle for democracy in Ghana and the assertion of the sovereignty of her people”.¹⁶⁴

Reference 300 - 0.01% Coverage

6.10.2 It is obvious that the student movement played a big role in national affairs during the mandate period. It was also observable that the role got even larger during periods of unconstitutional government than during periods of constitutional rule. During the AFRC days in 1979, it became a partner of government as it put its numbers behind every policy of the government. It participated actively in the events that resulted in massive human rights abuses. The student movement will never live down the moment when it made the call “Let the blood flow”, in agitation for more executions. During the first few days of 1982, it was also counted on as a base for support when the PNDC came to power.

Reference 301 - 0.01% Coverage

7.0.1 The task of the Commission was to determine whether or not the youth movements had contributed to the violation or protection of human rights during the mandate period. The chapter has chronicled the activities of the politically-inclined youth movements of the mandate period. In the main, these were the Boy Scouts and Girl Guides Movements; Ghana Young Pioneers movement (GYP); the National Youth Service Corps (NYSC); the June Four Movement (JFM); the People’s Revolutionary League of Ghana (PRLG); and the Movement on National Affairs (MONAS). The chapter endeavours to shed some light on their activities, mode of organization and funding. In addition, the impact of their activities on the human rights terrain is also highlighted. In this regard, the fate suffered by their leaders and other prominent activists when the governments that sponsored them were removed from office. It also discusses the nature of the relationship between members and leadership of these movements and government during their period of office.

Reference 302 - 0.01% Coverage

“The role of Scouts and Girl Guides in the Revolution”.⁶⁷ The seminar, reported to have attracted over 400 members of the associations, was intended to educate the membership of the associations to respect the human rights of the citizenry even though they were expected to assist in exposing economic saboteurs.

Reference 303 - 0.01% Coverage

7.8.2 The Youth Associations that were born out of the 4th June, 1979 Uprising, brought together young people with energy and drive, who defended the idea to which they had given their support. They were

behind many of the human rights violations and abuses that occurred, as, in their youthful exuberance, they urged “revolutionary” punitive measures against “enemies of the revolution”. They competed for control over power at the national level, with deadly consequences for some of its members.

7.8.3 Other youth groups that were meant to provide moral training for young people, such as the Boy Scouts, corrupted their mission and perverted their existence by joining in activities that resulted in the perpetration of human rights abuses on the communities in which they operated, particularly against women traders.

Reference 304 - 0.01% Coverage

THE ROLE OF CHIEFS - COMPLICITY OR RESISTANCE TO HUMAN RIGHTS ABUSES FROM

Reference 305 - 0.01% Coverage

8.0.1 This chapter deals with the role that chiefs have played in the political history of Ghana between the period 6th March, 1957, and 6th January, 1993. The assessment of the role of chiefs is done with specific reference to their efforts in the protection or otherwise, of human rights. One fact that became obvious from the work of the Commission was that, the chiefs themselves were often victims of human rights abuses, and that the chieftaincy institution suffered human rights abuses more than any other institutions, during the mandate period.

Reference 306 - 0.01% Coverage

8.4.1.8 It could be said therefore, that the situation in Ghana during the administration of the First Republic, was one in which chiefs could not fight against the human rights violations that were perpetrated by the government. Some chiefs were, in fact, themselves victims of human rights abuse, under the recognition clause of Act 81 and the Preventive Detention Act, 1958.

Reference 307 - 0.01% Coverage

8.4.11. 12 It could be said that Dr. Nkrumah and the CPP dealt a heavier blow to chiefs and chieftaincy by the introduction of Regional Political Representatives, Reduction of funds, the recognition clause, and the introduction of Preventive Detention Act, than any acts of the colonial government. The only way for the chiefs to survive was for them to openly support the government in power or to keep silent, even in the face of human rights abuses and violations.

Reference 308 - 0.01% Coverage

8.7.1.5 In 1975, the NRC was transformed into the Supreme Military Council (SMC). During the campaign for Union Government (UNIGOV), the SMC committed a series of human rights violations. In all these instances of human rights abuses, the chiefs were silent. On the contrary, they trooped to the Castle and pledged “unflinching support” to Gen Acheampong and praised Unigov as a divinely inspired concept to cure the ills of partisan politics.

Reference 309 - 0.01% Coverage

8.8.1.2 The AFRC Government under the policy of “house-cleaning” perpetrated and permitted the perpetration of serious of human rights violations and abuses, during its short tenure of office. Notable

among such acts were: the execution of eight senior military officers including three former Heads of State; killings; the public flogging of Ghanaian citizens, some of whom were stripped naked; seizure and the destruction of property; the demolition of houses, markets and market stalls; rampant searches of citizens for acts of hoarding; and detentions without due process. All these acts of human rights violations and abuses, demanded public or institutional protests or at least criticism, but there was none.

Reference 310 - 0.01% Coverage

8.10.1.4 Upon assuming power, the PNDC Government declared a "Holy War" to clamp down on kalabule,⁷⁴ and in the process, perpetrated widespread human rights violations and abuses. These violations included killings, disappearances, the violent seizure and occupation of private and public property respectively, the beating up and harassment of citizens, the detention of political opponents, torture of suspects and the wrongful dismissal of hundreds of people from their employment. Notable among the human rights abuses of the period was the kidnap and murder of three High Court Judges and a retired Army Officer. In all these cases, soldiers and/or other agents of the PNDC Government were to a large extent, the perpetrators of these violations.

Reference 311 - 0.01% Coverage

the myriad of human rights abuses that occurred during the era of the PNDC Government. There is no evidence that chiefs complained about the numerous human rights violations that took place during PNDC era.

Reference 312 - 0.01% Coverage

8.10.1.8 It is to be noted that the activities for which the chiefs supported the PNDC Government were not bad in themselves. Indeed, it was morally binding on them to help the government of the day succeed. What was regrettable, however, was that they all appeared to be interested in championing the cause of the new government, to the neglect of the human rights abuses suffered, both by themselves and some of their subjects at the hands of the very government to whom they had made pledges of support. Even though the chiefs appeared to be acting in favour of national

Reference 313 - 0.01% Coverage

8.12.4 During the mandate period, the governments, especially the military ones, courted chiefs for support, and chiefs courted government for development projects.⁸⁶ Many chiefs sought partnerships with the government of the day with the hope of using their contacts to secure projects for their respective traditional areas.⁸⁷ Accordingly, chiefs usually expressed full support for a government as soon as the old government was overthrown. They thus rendered themselves liable to the tag of collaborators of whatever human rights abuses were perpetrated by the various governments.⁸⁸

8.12.5 Another consequence of such act of collaboration was that it weakened the independence of the chieftaincy institution, and created a situation where the individual chiefs could not be critical of sitting governments, and therefore could not offer their subjects any protection when it came to government-sponsored human rights violations and abuse.

Reference 314 - 0.01% Coverage

88 Professor George Hagan, "Chieftaincy and the Abuse of Human Rights In Ghana." (Unpublished) Paper presented to National Reconciliation Commission by the Chairman, National Commission on Culture, 14th July, 2003.

Reference 315 - 0.01% Coverage

nor did they confront civilian governments on issues of human rights violations. The Regional and National Houses of Chiefs still remain an untapped asset for strengthening the influence of chiefs in the governance of the country.

Reference 316 - 0.01% Coverage

THE ROLE OF RELIGIOUS BODIES – COMPLICITY OR RESISTANCE TO HUMAN RIGHTS ABUSES

Reference 317 - 0.02% Coverage

9.0.1 The interventions of religious bodies on matters of social concern, especially socio-political issues, have always carried weight. Therefore, the protest or silence by these bodies or institutions, on human rights violations and abuses influences the perceptions of many people in Ghana. To facilitate the assessment of the role, if any, of religious bodies regarding the complicity or resistance to human rights violations from 6th March, 1957 to 6th January, 1993, the Commission focused its work on the Churches¹ in Ghana, the Islamic religion, both the Orthodox and the Ahmadiyya Muslim Mission, the Traditional Religious groups with reference, particularly, to the Afrikania Mission.

9.0.2 The religious bodies are the conscience of the nation. In this regard, they are expected to be able to point out abuses, and work to protect and defend the rights of all Ghanaians, with a view to bringing about improvement and progress in socio-political life. religious bodies can transform individuals in society, and bring about social change that prevent human rights violations and abuses. Consequently, the following roles are expected of them • to provide prophetic witnessing; • to oppose human rights abuses in society; • to build awareness on morality and human rights issues; • to provide moral education; • to seek moral transformation through advocacy; • to speak clearly and without equivocation and provide moral direction on important moral issues; and

Reference 318 - 0.01% Coverage

spearheading resistance to human rights abuses, contributing to the promotion of respect for human rights, as well as the impact that these activities had on the human rights landscape during the mandate period. The chapter also highlights the significance of statements, communiqués, pastoral letters, Press releases etc, from these religious bodies, at the critical times when they were issued. It is hoped that the religious bodies would be strengthened to keep up with their advocacy role and continue to provide moral guidance to the nation.

Reference 319 - 0.01% Coverage

9.1.1.3 The role that traditional religion played in human rights abuse was an indirect one. Rumours of rituals for protection have become part of our socio-political culture. The phenomenon of ritual murder has been part of the Ghanaian system of cultural beliefs, and has, in fact, gained prominence in legends and folktales. This phenomenon has also served as explanation for strange or extraordinary homicide cases in the country.

Reference 320 - 0.02% Coverage

9.1.3.1 Traditional religion has also been linked to human rights abuse on account of the widely-held belief that through the use of human parts, rituals could be performed to affect the material circumstances of the individual making the request. Consequently, some individuals were killed for purposes that must have been related to the performance of rituals. The circumstances surrounding certain killings that occurred, and the way the dead bodies were found, lent credence to the suspicion that they were not ordinary murders. Very often the bodies were found mutilated with some vital parts missing. A number of murder cases reported in some parts of Ghana in the 1980s fall into this category. For instance, in January, 1981, the body of Kingsley Ackaah, alias Kwame Kaya, a fifteen-year-old schoolboy and native of Baakrom near Sefwi Bekwai, was found without his head⁸. Again, in November, 1981, the body of nine-year old Kwasi Gyimah was found at the outskirts of Sefwi Bekwai without his head⁹. Similarly, in November, 1984, Kwaku Nkrumah, a sixty five-year old palm wine tapper of Sefwi Bekwai, was found dead in the bush without his head.¹⁰ Also, in May, 1986, thirteen-year old Akwasi Ampomaning, a schoolboy from Sukusuku near Sefwi Bekwai was found dead with his arms missing¹¹. Again, Kumade Mensah Zormelo was killed for a sacrifice that is required annually, in accordance with traditional practices, to enable the fishermen of Kedzi, to have bumper fishing season.¹² All these killings are believed to have been committed to serve ritual purposes.

Reference 321 - 0.01% Coverage

9.1.5.2. Trokosi practice is now mainly regarded as a means of averting the wrath of the gods. This is done by invoking the gods for mercy, in cases where an offence has been reported to the shrine. It is also a traditional judicial system, but one fraught with serious human rights violations, as the practice involves the incarceration and abuse of innocent young women. The practice of Trokosi is now recognized to be akin to slavery. The predominant modern view is that the Trokosi system is obnoxious, inhuman and a violation of the human rights of the persons involved, and therefore must be stopped.²⁰

Reference 322 - 0.01% Coverage

9.2.4.2 The issue of human rights abuses during the NLC against certain individuals that raised public concerns were the public ridicule of Boye Moses, one of Dr. Nkrumah's security aides, who was paraded in a cage on the streets of Accra³³, the strike involving the mine workers of Ashanti Goldfields in Obuasi, during which three of the workers were shot dead by the police³⁴, and the decision of the government to ban most of the leading members of the former CPP from contesting the 1969 general elections.³⁵ All these violations did not elicit any comment from the Muslim communities and their leaders at the time. In short nothing much can be said about the activities of Muslim Organizations under this regime.

Reference 323 - 0.01% Coverage

9.2.6.1.9 Having openly declared their support for UNIGOV, they were not in a position to criticise the human rights abuses that the regime indulged in, during the campaign for the referendum on Unigov.

Reference 324 - 0.02% Coverage

9.2.10.3 Generally, the Muslim communities feared that colonial rule would impose Christianity on them. This led the Muslim communities in Ghana to isolate themselves from active participation as a group to react to issues, which bordered on human rights abuses against either them or other people in society.

9.2.10.4 It could therefore be said that Muslims in Ghana had, never as a group, championed any cause, when it came to issues of public agitation against human rights violations and abuses. During military takeovers in Ghana, people were maltreated, maimed, whipped, killed and some properties were seized, but none of these produced official comment from the Muslim Community. This is not surprising since at most times the leaders of the new Muslim unity organizations were handpicked by the government of the day. The result of this silence has been the marginalization of Muslims in issues relating to the protection of human rights. Apart from a few Muslims in politics, the Muslim communities have not been politically active in terms of formal protests or endorsement of government policies and directives. The Ghana Muslim Mission was not in favour of the Preventive Detention Act, yet because of its non-political stance, the Mission could not officially and openly condemn the Act, although some of its members suffered under it.⁵⁴

Reference 325 - 0.01% Coverage

9.2.10.7 Neither the Ahmadiyya Muslim Mission nor the Orthodox Muslims supported brutalities, killings, seizure of property and other related human rights violation. However, although they frowned on human rights violations such as flogging in public, detention without trial and the parading of human beings in ironcage, they did not openly protest those atrocities.

Reference 326 - 0.01% Coverage

9.3.1.3 In Ghana, some leaders of the various Christian religious groups have been vocal in drawing government's attention to what is seen as human rights violations abuses in Ghana's political life. Christian religious bodies and successive governments have sometimes collaborated in various areas, especially on issues of socio-culture interest, because in Ghana there has not been a clear distinction between the sacred and the secular.

Reference 327 - 0.01% Coverage

9.3.1.4 The rapid socio-cultural and political transformation of Ghana, made it necessary for adjustments to be made in such collaborations between Church and State in the post-Independence Ghana. Consequently, when Christian religious bodies got involved in politics, they did so not as a matter of civic duty, but mainly on the basis of certain ideologies, laws, and pronouncements by certain personalities, which were perceived as blasphemies and in contravention of international human rights laws.

Reference 328 - 0.01% Coverage

9.3.2.10 Between 1957 and up to the overthrow of the CPP Government in 1966, the Christian religious bodies mainly played a human rights advocacy role under the name of the Christian Council of Ghana. The Catholic Church also later joined in this crusade. During this era, the issues of concern included the introduction of the Preventive Detention Act (PDA), the Deportation Act and the bomb-throwing outrages that resulted in many deaths, especially those of GYP, in the 1960s.

Reference 329 - 0.01% Coverage

9.3.3.2 Following the overthrow, CPP office holders and other government functionaries were detained without trial. Indeed, one of the security men of President Nkrumah, Boye Moses, was put in a cage and paraded through the principal streets of Accra, amidst public ridicule. The security apparatus of the President had been so feared and hated, that no one gave a thought as to what ill-treatment was being meted out to those who constituted it; and so no one, not even the Churches, condemned this undignified treatment of a human being, and the violation of Boye Moses' human rights, in particular.⁷⁴

Reference 330 - 0.02% Coverage

9.3.5.4 The Christian Council of Ghana, and the Ghana Catholic Bishops' Conference opposed Gen Acheampong's proposal for the formation of a Union Government (Unigov). This was to be a constitutional government, which was to have representation of the Armed Forces, the Police and civilians. The two religious bodies saw it as an attempt to perpetuate military rule in the country. As time went by, antimilitary sentiments of the church leaders became more vehement, because of serious human rights abuses then being perpetrated by the government.

9.3.5.5 As wanton arrests and beatings continued, heads of the Christian Council and the Catholic Bishops' Conference issued a joint memorandum of protest, after a meeting with Gen Acheampong in which they protested against acts of arbitrary arrests. They specifically, protested the arrest and detention of K Addai-Mensah, National Secretary of the Ghana Bar Association, in Kumasi on 21st February, 1978; the brutal beating up of Peter Owusu Donkor, Headmaster of Opoku Ware Secondary School, as well as the Assistant Headmaster and students of Opoku Ware Secondary School; and students of Mfantsipim School in Cape Coast respectively, by supporters of the concept of Unigov. The Memorandum also protested the denial of such basic human rights as the freedom of speech and of association to the citizenry.

9.3.5.6 A pastoral letter by the Catholic Bishops' Conference condemned the human rights violations perpetrated by members of the security forces;⁷⁵

Reference 331 - 0.01% Coverage

9.3.7.1 The 4th June, 1979 coup brought untold hardship to many Ghanaians for the first time in the annals of Ghana's political life. The AFRC regime lasted for only three-and-a-half months, but it perpetrated widespread human rights violations dubbed

Reference 332 - 0.01% Coverage

9.3.7.6 The AFRC Government had the shortest life-span in the annals of governance of this country. However, the atrocities perpetrated under this regime were phenomenal. The killing of the Senior Military Officers, the public flogging of people, some of whom were stripped naked, the seizure and destruction of people's property, were enough instances of human rights violations that caused great concern in the country. In the main, the Christian Religious Bodies protested against such acts of inhumanity.

Reference 333 - 0.01% Coverage

9.3.9.2 Early in the life of the PNDC, certain events occurred that caused the religious leaders to express disagreement with the government. The Catholic Church's unequivocal stand against human rights abuses was contained in a joint pastoral letter of the Catholic Hierarchy of Ghana on "Moral Conversion and National Reconstruction," issued on the occasion of the 1982 Easter celebration. This was to serve as the church's reaction to the political situation in the country at that time⁹¹. The Catholic Church denounced violence of all kinds, including the arbitrary killings that were going on, emphasizing that each Ghanaian

has the right to security of life and legitimate prosperity. The church, once again affirmed that each Ghanaian is bound by the divine commandment: "Thou Shalt Not Kill".

Reference 334 - 0.02% Coverage

9.3.9.10 In 1989, the government sought to control religious bodies by requiring that all religious bodies should be registered under the Religious Bodies Registration Law, 1989 (PNDCL 221). The Catholic Bishops' Conference and the Christian Council informed the Chairman of PNDC, by a joint memorandum on 11th August, 1989, of their displeasure at that law and refused to register under the Law. The message explained to the Chairman and members of the PNDC that the law constituted an infringement on the fundamental human rights of the basic freedom of worship as stated by article 18 of the Universal Declaration of Human Rights. The message further alleged that the Law also contravened article 8 of the African Charter on Human and Peoples' Rights, and even the government's own enabling Law, the Provisional National Defence Council (Establishment) Proclamation (Supplementary and Consequential Provisions) Law 1982, (PNDCL 42). Section 1(b) of PNDCL 42 which provided as follows: "Respect for fundamental human rights and for the dignity of human persons are to be cultivated among all sections of the society and established as part of the basis of social justice." The religious bodies believed that the registration requirement was the first step in a bid to deny legal existence to those bodies that the PNDC might not favour. The Christian Religious Bodies in keeping with the ethics of rendering "service to mankind" protested against all the abovementioned incidents of human rights abuses.

Reference 335 - 0.02% Coverage

9.4.5 From the facts outlined above, it is clear that Christian religious bodies have clashed with various governments that ruled Ghana. This was because of the particular stance that they took on certain human rights abuses perpetrated by these governments. In pursuance of their advocacy role, the religious bodies have engaged in activities in the form of issuing protest letters, communiqués, memoranda, pastoral letters etc. For example, the Christian Council of Ghana, and the Ghana National Catholic Secretariat have often spoken with one voice on matters that they considered worthy of such joint action.¹⁰⁰ It is worth noting that, not much has been heard from the Islamic Religious groups in an advocacy capacity, and the Traditional Religious groups have played no advocacy role at all.

9.4.6 Religious bodies have members in every stratum of society. Consequently, the opinions and actions of the leaders of these bodies shape public morality and behaviour. The 'culture of silence' that pervaded the political fabric of Ghana during the days of the PNDC, had a serious impact on the advocacy role of the Christian religious bodies. All the same, the Christian religious bodies especially, the Christian Council of Ghana and the Catholic Bishops' Conference were always persistent and consistent in criticizing governments on human rights issues.

9.4.7 Instances of religious groups seriously engaging governments in terms of protests and other actions on human rights issues have been commendable, even though on a few occasion such protests fell short of expectation. On issues such as the Preventive Detention Act, the bomb outrages of the 1960s, the killing of the Senior Military Officers, the flogging of citizens in public, the demolition of public properties, the disappearance of certain individuals, and the abduction and gruesome murder of the three High Court Judges and a retired Officer of the Ghana Army, have all elicited protest from them.

Reference 336 - 0.01% Coverage

9.4.8 It is hoped that now that some of the traditional religious groups are organized under the Afrikania Mission, they would be more vocal in speaking out on national issues as well as reforming some of their practices that constitute human rights abuse.

9.4.9 The Muslim groups should also be heard more on matters of human rights, so that the task of infusing morality into our governance would not be left to the Christian groups only. Already there are hopeful signs that the need to ingratiate themselves with ruling government has become a thing of the past, and so this should enable them to criticize the government whenever the need arises.

Reference 337 - 0.04% Coverage

CHAPTER 1 RECOMMENDATIONS FOR RECONCILIATION AND INSTITUTIONAL REFORM 3.0.1

International law as well as domestic law oblige government to protect its citizens, and provide redress for those whose human rights are abused, impose sanctions on those whose conduct caused the violation, and prevent a re-occurrence of the conditions that produced the violation.

3.0.2 To this end, the Parliament of Ghana passed an Act, the National Reconciliation Commission Act 2002 (Act 611), to establish a National Reconciliation Commission.. The main function of the Commission was to investigate abuses and violations that occurred particularly during periods of unconstitutional rule, and to seek and promote national reconciliation among the people of the country by recommending appropriate redress for persons who have suffered any injury, hurt, damage, grievance or who in any other manner have been adversely affected by the violations and abuses of their human rights arising from the activities or inactivities of public institutions and persons holding public office during periods of unconstitutional government. The Commission was also to make recommendations that would ensure the non-repetition of the conduct that produced the injury or violation. 3.0.3 The Commission is expected to do the following: • Produce proper documentation establishing the nature and causes of serious violations and abuses of human rights; • Provide an accurate historical record of matters investigated by the Commission; • Identify victims of violations and abuses of human rights; • Recommend the specific needs of each victim or group of victims; • Suggest measures to prevent and avoid the repetition of such violations and abuses; • Recommend reforms and other measures whether legal, political, administrative or otherwise needed to achieve the objects of the Commission; • Promote healing and reconciliation; and • Recommend the setting up of a Reparation and Rehabilitation Fund. 3.0.4 The Commission investigated the social background of the human rights abuses under the following sectoral themes: • The Security Services; • The Legal Profession (including the Judiciary); • The Media (both print and electronic); • The Labour and Students Movement; • The Professional Bodies (other than Legal) and civil society groups; and • The Religious Bodies and Chieftaincy Institution. 3.0.5 These thematic researches provided a kaleidoscopic view of the human rights terrain since Ghana attained Independence, and the information obtained has formed the basis of the recommendations made. 3.0.6 The recommendations for healing and reconciliation are set out first, followed by the institution-specific recommendations for reform, and then the general recommendations. The institution-specific recommendations for reform are also arranged in the order in which the Commission has published the reports in Vol. IV of the Commission's Report

Reference 338 - 0.04% Coverage

3.3.18.2 Seconded military personnel also undermined the work the culture of the civilian organisations into which they were introduced, with the result that they became the objects of hatred. These negative feelings were this extended to the military institution as a whole THE POLICE SERVICE 3.3.19

Modernisation Of The Police Service-Justice Archer Commission 3.3.19.1 Since Independence, the Police Service has not undergone any major transformation. It is in imperative that the Report of the Justice

Archer Commission on the structure, organization and operation of the Ghana Police Service be reviewed and the recommendations implemented. 3.3.20 Decentralisation Of Police Command 3.3.20.1 The Police Service is over centralized with over-concentration of power in the hands of the Inspector General of Police (IGP). This must be reviewed and decentralisation embarked upon with power, authority and responsibility devolving on the Regional Commanders to police their own regions. The Police Headquarters should become the centre for policy formulation and analysis and monitoring of the Regional Commands. 3.3.20.2 Decentralisation must impact on the decision-making mechanism and sharing of responsibility with local and administrative authorities at the Regional and District levels. 3.3.20.3 Decentralisation of operational Command must be pursued. For instance, the situation on 31st December 1981 when the Armoured Car Unit of the Police Service could not be mobilized to fight in support of Government because the IGP was not available is strategically and operationally unacceptable. The command structure should be reviewed and decentralized to make it possible for one of his deputies to assume Operational Command responsibility. 3.3.20.4 The inclusion of the IGP on the Advisory Board which also considers promotions creates concentration of power in one person's hand. This should be reviewed. 3.3.20.5 The promotion of Junior Ranks in the Police Service should not involve the IGP directly although he may remain the authority to whom complaints of unfair dealings and appeals in respect of promotions may be made. 3.3.21 Recruitment 3.3.21.1 A National Police Service 3.3.21.1.1 Efforts must be made to ensure that the Police Service has representation from every ethnic group in the country, as policing involves every community. Marginalised groups should be identified and given special encouragement to provide suitable candidates for enlistment. 3.3.21.2 Vetting Of Candidates 3.3.21.2.1 All persons entering the Police Service must undergo Positive Vetting to ensure their moral integrity. 3.3.22 Training And Education 3.3.22.1 With the rapid social transformation and democratic governance in our contemporary times, the Police Service must be aware of the necessity to provide good, qualitative and professional training and awareness programmes, if the personnel are to properly fulfil their mission. Training should educate Police Officers, Men and Women that he or she is the custodian of the law and not above it and it is expected of them to conduct themselves within the law. 3.3.22.2 The training curriculum must be redesigned to include intelligence gathering, awareness and training modules more closely linked to social realities, such as ethnic relations, human rights,

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3.3.23.7.1 A policy of resettlement should be designed for serving personnel. Arrangements should be made to enable those who are unsuitable for active service to be discharged and resettled. Counselling should be instituted as an integral part of life in the Police Service, to reduce the number of burnt out personnel whose activities bring dishonour to the Service. 3.3.24 Professionalism And Police Ethics 3.3.24.1 Identification of role of the Police Service as a public service, in accordance with democratic values, must transcend all organizational levels and demonstrate a professional ethic based on accountability, impartiality, Police dignity and recognition of the value of their work. 3.3.24.2 Abuse of power continues to be a problem. The training of officers should emphasise the importance of respecting the bounds of their authority and using the power conferred on them by the State responsibly. 3.3.24.3 The raising of unauthorised barriers for the purpose of extorting money from drivers and passengers as well as the use of Police vehicles to facilitate the commission of crime are problems that must be tackled by the Police administration in earnest. Officers-in-charge of areas where unauthorised barriers are found must receive official censure for inadequate supervision of subordinate staff. 3.3.25 Corruption 3.3.25.1 Corruption in the Police Service is a major obstacle that must be overcome in working towards an efficient and responsive Police Service. The inefficacy of laws are traceable to poor enforcement occasioned by corruption. Strenuous efforts must be made to tackle this problem. Police authorities must devise mechanisms for monitoring the lifestyles and conduct of Police personnel to ensure that the transaction

costs of corruption would be raised to levels that would discourage corrupt practices. 3.3.25.2 A new Code of Conduct must be formulated to check corruption. The Police administration must establish an office of Internal Policing. This office, whose existence should be widely publicised, should be tasked to receive complaints of corruption and extortion from the general public, and act on them. 3.3.25.2 It is further recommended that regular spot-checks must be instituted by the Police Administration at the various barriers to check extortion and corruption. 3.3.25.3 Service personnel must be motivated with improved conditions of service, including provision of adequate equipment and emoluments, to improve their self-respect and institutional loyalty. 3.3.26 Standing Orders 3.3.26.1 The Police Standing Orders must be reviewed in the light of the history of Human Rights violations and abuses in Ghana and the need to nurture democratic culture. 3.3.26.2 Modern techniques on crowd control and conduct of Police Investigations should be studied and incorporated into the reviewed Standing Orders. 3.3.26.3 Live ammunition should not be used to control crowds, and the Standing Orders must prohibit this. 3.3.27 Community Partnership 3.3.27.1 New community and problem-solving approaches to policing, based on closer contact and co-operation with society, through institutions, community organizations or the citizens themselves, must be encouraged and sustained. 3.3.27.2 The Police Service should open to the public to improve police-public relations, and thereby improve policing in general. PRISON SERVICE 3.3.28 Human Rights Education For Prison Officers 3.3.28.1 Prison Officers should be given human rights education to enable them to appreciate the rights of prisoners. They should also be trained to perform their duties in a humane manner. 3.3.29 Enhancing Career Prospects For Prison Officers 3.3.29.1 The Prison Service has enough well-trained personnel to run the institution at its highest level. Care should therefore be taken in introducing into the Service, persons from other institutions who block the career progression of professional Prison Officers, and thereby affect institutional morale. 3.3.29.2 Persons introduced into the Service from other institutions tend to bring with them orientations different from those of the Prisons Service, as well as a lack of appreciation of the essence of the Prison system. 3.3.30 Advanced Training For Senior Prison Officers 3.3.30.1 Facilities should be developed for the training of the senior core of the Prison Service and the practice of sending Senior Prison Officers to train with the Military in the Senior Staff Course should be discouraged in order to enhance institutional self-confidence and identity. 3.3.30.2 Home grown programmes for the formation of the Senior Command should be developed to facilitate the managerial competence of the Superior Officers. 3.3.31 Service Conditions 3.3.31.1 Salary 3.3.31.1.1 As all persons in the Security Services, Prison Service personnel are not permitted to unionise. Consequently, there should be a mechanism for periodic review of salaries allowances and other emoluments to ensure that they keep pace with economic trends and with those of the other Security Services in the country. 3.3.31.2 Accommodation 3.3.31.2.1 Accommodation for Prison Officers must receive attention as the nature of the job requires that they live close to the prison facility. Existing accommodation facilities are in a poor state and must be refurbished to improve morale in the Service. 3.3.32.3 Counselling 3.3.32.3.1 The risks to which Prison Service personnel are exposed as a result of the now more sophisticated nature of the prison population, require the intervention of counsellors. Counselling services should be instituted to address the mental health of personnel, and thereby reduce the incidence of substance-abuse. 3.3.32.3.2 The modern system and philosophy of Prisons would require that Prison Officers be properly equipped with the necessary counselling skills to be able to help in the reform and rehabilitation of prisoners in their care. 3.3.32.4 Promotions 3.3.32.4.1 Regulations on promotions should be strictly adhered to, in order not to create disaffection within the Service. 3.3.32.5 Compensation For Deaths And Injuries

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3.3.35.2 Even in death, those executed deserve the ultimate respect and dignity required in burial rites forms; i.e. burial in coffins, in properly marked graves and according to properly accepted customs and

religious sensitivity. 3.4 LEGAL PROFESSION (INCLUDING THE JUDICIARY) 3.4.1 Human Rights education should form part of Continuing Judicial Education to make them more sensitive to human rights issues. 3.4.2 Judges need to appreciate the role of the courts in a new nation so that they would be able to maintain the necessary balance between the government and the citizen. 3.4.3 Judges need to appreciate their role in maintenance of constitutional government. They should not swear any usurper into office. The usurpation of State power must remain an illegitimate act for all time. 3.4.4 Lawyers need to appreciate the role of the courts in governance so that they do not lead the way in ousting the jurisdiction of the courts. 3.4.5 The Ghana Bar Association (GBA), and its leaders deserve commendation for remaining steadfast in pointing out the need to respect the human rights of the citizenry, and for helping to defend those rights, particularly for the indigent. 3.4.6 The GBA deserves commendation for instituting the Martyr's Day celebration, and maintaining it in the face of official harassment and intimidation. 3.4.7 Lawyers, particularly ambitious young lawyers, have often been the ones who flocked to the banner of usurpers and lent them the image of legitimacy. In turn, such young lawyers also attained prominence out of proportion with their personal achievements in the profession. Accepting an appointment to serve in a usurper government must be condemned as an immoral act, and an affront to the Ethics of the profession. All such persons must be sanctioned when constitutional government is restored. 3.4.8 Lawyers, in particular the GBA, should be encouraged to make their voices heard even during periods of constitutional rule, so that the government would receive necessary direction and dispassionate criticism in its conduct of governance, and its respect for human rights. 3.4.9 Discipline from within an independent arm of government, is better for the maintenance of institutional independence, than discipline from outside the institution. The Office of the Chief Justice should institute effective mechanisms for policing the conduct of Judges and Magistrates and instituting disciplinary measures. This is necessary in order not to make the discipline of Judges and Magistrates an item on the political agenda of any government. 3.4.10 Judges, especially Judges of the Superior Courts, should live above reproach to prevent putting themselves in the power of the Executive, and so being open to improper influences by the Executive. 3.4.11 Appointments to the Judiciary must involve a good and objective system of assessment of character, as the requirements of fair adjudication demand a high degree of personal integrity. 3.4.12 The convention regarding assumption of positions in the Judiciary by seniority, should be respected and adhered to, as far as the requirements of efficiency would permit, as such conventions remove the incentive for ambitious juniors to jockey for positions by currying favour with the Executive. 3.4.13 The Law Reporting systems should be overhauled to enable judgments to be available for comment and criticism within a reasonable time. Reporting judgments within a reasonable time

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in much the same way as the Police are required to do under the Criminal procedure Code, 1960 (Act 30). This would reduce the extent of abuse of the BNI's powers of detention 3.4.26 In making laws, lawmakers should observe the tradition and practices in existence and ensure that all legislation, particularly penal legislation, is prospective. Although Article 107 of the Constitution, 1992, prohibits retroactive legislation, the importance of it must be generally accepted and appreciated by the citizenry, that justice requires that laws do not take retrospective effect. Such acceptance would ensure that the constitutional provision is respected in its letter and spirit. 3.4.27 Laws have to be given their own numbers instead of being tagged onto others. For instance PNDCL 305 is the Illegal Seizure of Ivorian and Ghanaian Farms (Abatement of Proceedings) Law, 1992; PNDCL 305A is Patents Law, 1992; PNDCL 305B is Food and Drugs Law, 1992; PNDCL 305C is Veterinary Surgeons Law, 1992 and 305D is Refugees Law. These Laws have nothing in common and should have been dignified with numbers of their own. Such practice would also preserve the appearance of orderliness in the drafting of legislation. 3.4.28 Laws have to be numbered serially, according to the chronological order of when they were made. This would ensure the appearance, again,

of orderliness in the drafting of legislation. It should never happen for an earlier enactment to take a number subsequent to one that was purportedly made later, as in the case of PNDCL 315 purportedly made on 3rd December, 1991 whilst all the preceding ones were made in 1992 or early 1993. Nor should it be the case that a later law would bear an earlier number as in the case of Trustees Incorporation (Amendment) Law, 1993 (PNDCL 311), made on 6th January, 1993 but, Council for Indigenous Business Association Law, 1993 (PNDC L312) purportedly made on 5th January, 1993 and Ghana Institute of Management and Public Administration Law, 1993 (PNDCL 318) also made on 5th January, 1993. 3.4.29 Laws targeted at particular individuals, i.e ad hominem legislation should not be the feature of a civilised legal system. The governments of NLC, SMC and PNDC passed too many such Decrees and Laws. They are a blot on the statute-books.

3.5 RECOMMENDATIONS/ REFORMS – MEDIA (BOTH PRINT AND ELECTRONIC)

3.5.0.1 The Media is known as the 'Fourth Estate of the realm'. This means that it has a role in governance just as the Executive, Legislature and the Judiciary. It is the platform on which and through which the citizenry express approval or otherwise of how it is being governed; it is the means through which the populace can make known to politicians and to each other its concerns and convictions in matters of the common good in democratic governance; it is the political estate which informs the public of its rights and responsibilities; and above all; it is charged with the constitutional mandate to hold government accountable.

3.5.0.2 It therefore requires safeguards of its rights and tutelage of its responsibilities. It also, therefore, requires actors – media women and men – who know these human and social rights and responsibilities and are prepared to uphold them at all costs.

3.5.0.3 On the current media landscape, thanks to the existence of the National Media Commission and the repeal of the Criminal Libel law, the media are safe from threats of human rights violations and abuse that past practitioners suffered, in the course of executing their professional duties. and to the imminent enactment of the Freedom of Information Bill,

3.5.0.4 What remains to be done is how to help the media make responsible use of the various freedoms, rights and means given them towards upholding the common good of the citizenry and enhancing democratic governance. The enactment of the Freedom of Information Bill should also advance this cause.

Recommendations/ Reforms

3.5.1 The passage of the Freedom of Information Bill (FOI) be hastened to give journalists access to official information to disseminate to the public because government business is public business and the public have a right to know.

3.5.2 Courts should appreciate the work of journalists so as not to issue orders that may have the effect of gagging editors and preventing them from publishing information aimed at exposing corruption or human rights violations by officialdom.

3.5.3 The UN Declaration of Human Rights that allows persons to receive and disseminate information must be respected. People must be encouraged to provide accurate information to journalists, whilst at the same time discouraging false and malicious information, in order to facilitate the performance of their role in holding government to account.

3.5.4 The government, as the dominant player in the economy, should not use advertisement as a tool to intimidate editors of independent media houses either by refusing to place advertisement in their media or stop placing them in a bid to influence their editorial policy.

3.5.5 The government, as the dominant player in the economy, should also be seen to be supporting the development of the privately-owned media as they provide alternative perspectives to government and to governance issues

3.5.6 To prevent vilification and de-legitimization of constitutional governments in power, it is suggested that journalism training institutions intensify teaching of constitutional principles and the importance of constitutional governance and its processes.

3.5.7 The Management of Media Organisations must be seen providing support to journalists who offend the government in the course of their work. Leaving journalists alone to face the might of the Executive can offer no incentive to good investigative journalism, or the exhibition of courageous journalism.

3.5.8 The teaching of media social responsibility must be strengthened to produce journalists, conscious of the need to exercise discretion and responsibility in the publication of news items that can undermine national stability in a young and developing democracy. Ultimately, however, the sense of ownership and patriotism should inform the exercise of the media's

social responsibility. 3.5.9 The curricula of journalism training institutions should be reviewed to include human rights education, as well as the value of a free and independent press. 3.6 RECOMMENDATIONS /REFORMS ON LABOUR 3.6.1 Trade Union leaders must recognize that they function better under constitutional rule as there is little effort to emasculate or undermine them. Consequently they should be slow to encourage disruptions in the due political procedures in their fight for their rights, as Labour Unions form an indispensable part of civil society in a developing country. 3.6.2 Workers in dispute with the government should be encouraged to respect the rules relating to strikes, sit-down actions, etc. 3.6.3 Trade Union leadership must strive to maintain their independence from government, and be mindful of co-optation strategies that governments might adopt to neutralize their activities. Cooptation by governments undermine their ability to properly represent their constituency. 3.6.4 Trade Union leaders must ensure that they do not lose touch with their constituency, as they represent the hope of workers that they have protection against employer-mistreatment and Executive-high-handedness.

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3.6.6 The government should improve its mechanism for consultation with Trades Unions on major economic policies to secure their understanding and cooperation. 3.6.7 Schemes such as the Workers Brigade and National Reconstruction Corps concept have value in providing opportunities for employment of unskilled persons. However, such schemes have ended up being a mere drain on the national coffers, and have therefore been avenues for pursuing partisan and parochial interests. A properly designed scheme would augment food production, and offer opportunities for skills training 3.6.8 Rampant strikes to pressurise government for salary increases have been blamed for undermining the economy at critical periods, such as the pre-referendum period in 1978 and the pre-election period in 1992. 3.6.9 The process of referring labour disputes and grievances to arbitration or conciliation should be made more efficient to avoid unnecessary labour unrest. In this respect, rules regarding the handling of labour disputes and grievances must be adhered to as provided under the relevant labour laws and Collective Bargaining Agreements. 3.6.10 Dismissals by government by radio and television announcements should be a thing of the past. This mode of removing persons from public office undermines loyalty to the State, creates insecurity in every public officer and destroys reputations that individuals concerned have built over time. Proper procedures for accountability in office and for disciplining senior public officers should be developed if the existing ones are inadequate, and they must be evenly applied to avoid destroying careers without just cause. 3.6.11 The Management in Public institutions should respect procedures for discharge of inefficient employees to ensure that there would be no opportunity for victimisation. 3.7 RECOMMENDATIONS/REFORMS - PROFESSIONAL BODIES (OTHER THAN THE LEGALPROFESSION) AND CIVIL SOCIETY ORGANISATIONS 3.7.1 Professional bodies should not confine themselves to the pecuniary interests of their respective associations only, but also avail themselves of the opportunity to make human rights interventions whenever necessary. Professional bodies should make human rights education and protection an integral part of their professional responsibility and ethics. 3.7.2 Engineers, particularly those employed by the State, must supervise the work of contractors properly. The country has not always derived value for money for construction projects undertaken, thus rendering governments unpopular for the poor state of infrastructure and impoverishing the country further. 3.7.3 Professionals and technicians in the control room in utility companies have also been cited as deliberately sabotaging governments by cutting power and supplies at critical times to make the governments unpopular. Persons with such responsibilities must appreciate the national security implications of such sabotage. 3.7.4 Human Rights education should be made mandatory at all levels of the country's educational system, both civilian and military, from primary to the highest level, with a view to entrenching in generations of Ghanaians deep respect for human life and all other fundamental rights of the person.

3.7.5 The findings of the Commission should be used as teaching materials and scripts for drama, film-making, etc., to educate the nation to avoid similar human rights abuses in the future.

3.7.6 Evidence before the Commission testifies to the fact that there is a general lack of knowledge and consciousness and respect for human rights in the country. This defect should be remedied by a sustained programme of public education by Commission on Human Rights and Administrative Justice (CHRAJ) and National Commission for Civic Education (NCCE).

3.7.7 The CHRAJ which has a human rights advocacy function, should not only be adequately resourced to uphold human rights and fight human rights abuses, but also empowered through legislation to effect expeditious redress whenever and wherever

human rights violations occur in Ghana. 3.7.8 The NCCE under the 1992 Constitution should give human rights education priority attention. Its mandate should be properly defined to focus purposefully on human rights education.

3.7.9 There is the need for institutional reform in the Political Parties to reduce corruption and other types of conduct that produce public disaffection towards political activists.

3.7.10 There must be intensive public education so that the importance of Political Parties in governance would be appreciated by all. Evidence before the Commission showed that some communities were, in the past

devastated by partisan politics. Consequently, it is no surprise that partisan politics and Political Parties are perceived as destructive forces. This perception must be altered to encourage more citizens to participate in governance and competitive politics.

3.7.11 Practitioners of party politics also need serious education and training in order to know, respect, uphold and defend human rights in the art and practice of Party politics for the development of the citizenry.

3.7.12 Parties should be compelled to provide appropriate structures for achieving internal democracy, as intra-party fighting increases public disaffection for politicians and partisan politics in general.

3.8 RECOMMENDATIONS ON STUDENTS, STUDENT MOVEMENTS AND TERTIARY INSTITUTIONS

3.8.1 Policies that impact upon student/government relations are usually the cause of unrest. Lack of institutional facilities that government is expected to provide creates tension between students on the one part, and government on the other. Absence of services which government is supposed to provide, makes students begin to compare what they get to what they perceive members of government to be enjoying, and this leads to disaffection towards the government and produces public protests.

Governments must strive to provide basic facilities necessary for the efficient running of the institutions.

3.8.2 Policies on education that increase the pressure on students such as changes in syllabuses, etc, are bound to be resisted because the younger generation is always suspicious that the older generations do not want them to achieve the same heights that they achieved. Academic Boards of tertiary institutions should be sensitive to this reality in making changes to existing academic programmes and the formulation and design of new programmes.

3.8.3 Policies deemed to attack future job outlets and opportunities, such as the placement of products of new programmes on the job market, create unhappiness and resentment. In the global village, any attempt to reduce stature on the international market will produce resistance. Consequently care must be taken in formulating policies whose net effect would be to lower the prestige associated with particular academic qualifications, especially those that eventually affect international marketability. Therefore the eventual use to which new programmes would be put on the job market, must be thought through and worked out before the introduction of the programme so that expectations are not unjustifiably raised.

Reference 343 - 0.04% Coverage

3.8.14 In the past the involvement of academics in treasonable activities on campuses were camouflaged as the exercise of academic freedom. Governments adopted the practice of planting informants on the campuses and in the lecture rooms, to engage in surveillance on lecturers and students. To avoid the recurrence of such practices, there is the need for academics to appreciate the value of academic freedom and to strive to preserve it. They should initiate discussion on issues pertaining to the legitimate exercise

of academic freedom and so develop standards that enhance the enjoyment of academic freedom for all.

3.8.15 The development of an independent press has narrowed the space that student leaders had when they were regarded as the alternative voices in the political space. Public space for alternative voices should be preserved so as to reduce the impact of student leaders who concede, years after the fact, that they did not really know what they were playing at when they took a stand against the government.

3.9 YOUTH

3.9.1 Politically-inclined Youth groups are capable of being exploited as a support-base for subversion of the State. The State must show more interest in its youth. Efforts must be made to tackle the problems of out of school youth, so that they would not be available for easy manipulation and exploitation, as unemployed and under-employed youth form a ready source of support for agitators who promise utopia.

3.9.2 NCCE should design appropriate civic education materials for use by youth organisations registered with the National Youth Council. The programmes should help the youth to develop into responsible and patriotic citizens. However, care must be taken in the design, not to lift partisan objectives above national interests.

3.9.3 All youth organisations that handle out-of-school-youth must provide opportunity for such youth to receive civic education. The National Anthem and the National Pledge must be taught to the out-of-school youth.

3.9.4 The National Youth Council should be appropriately resourced provided with appropriate direction to enable it serve the purposes for which it was established.

3.10 RECOMMENDATIONS/REFORMS – THE INSTITUTION OF CHIEFTAINCY

3.10.1 It is observed that through legislation, governments interfered with the independence of Chiefs. In spite of this negative history, it is still necessary for Chiefs as the custodians of our cultural heritage, to regain and sustain their political influence as neutral actors in the political domain. Chiefs must be empowered to play their role effectively through education, especially on the Chieftaincy Act, the rights and responsibilities of Chiefs, land administration as well as well basic management skills.

3.10.2 Chiefs, who are regarded as opinion leaders, should be more vocal on issues of human rights violations in the country.

3.10.3 Chiefs should refrain from inordinate lobbying of politicians, particularly those in government, for projects to be sited in their communities. Such lobbying renders the institution vulnerable to manipulation by the politicians, particularly those in Government.

3.10.4 The Regional Houses of Chiefs should strengthen their capacity to handle chieftaincy litigation more effectively. It is desirable for the National House of Chiefs to be proactive in handling matters likely to get Chiefs locked in prolonged and expensive stool and land litigation.

Reference 344 - 0.04% Coverage

generating conflict. It is therefore advisable that religion, religious bodies and religious leaders do not allow themselves to be used in partisan politics.

3.11.2 Religion and politics have a lot in common, in that they both aim at serving humanity in the attainment of peace and well-being of the individual as well as of the society. They therefore have to work hand in hand. This calls for religion to know the art of politics and politics to know the philosophy of religion.

3.11.3 Religion and religious bodies have a duty towards the body politic, namely to be the conscience of society and the moral guide of the State, lest the good of the individual as well as that of the society be sacrificed on the altar of political expediency.

3.11.4 Human and civil rights are fundamental values of humanity, and so in the context of religion, they are God-given. They must therefore be protected, defended and upheld at all times. This is one of the roles that religion and religious bodies are called upon to play in society vis-à-vis politics.

3.11.5 Religion and religious bodies should guard against being used to give legitimacy to illegitimate regimes and governments. Religious Bodies have a duty to teach respect for human rights and freedoms, and to be the prophetic voice as well as the voice of the voiceless, when these rights are at risk particularly in the art of governance. It therefore behoves religion and religious bodies to know these human rights and freedoms in order to be able to hand them down to their members and to the general citizenry.

3.11.6 The various religious traditions in the country should educate their membership with regards to the past human rights

abuses and violations with a view to helping forestall their re-occurrence in the future. 3.11.7 Religious leaders must be discouraged from seeking political office within a particular administration as this undermines their standing in the eyes of non-adherents, thus creating division among members in that religious body. 3.11.8 Religious leadership should be very circumspect in its involvement in matters of politics, and avoid the pitfalls of being manipulated to condone or even support human rights violations and abuses as happened in the past. 3.11.9 In the name of freedom of religion and freedom of association, religion should not be used to discriminate against sections of the citizenry, nor to oppress as well as deprive certain persons of their fundamental human rights and freedoms. 3.11.10 The Forum for Religious Bodies (FORB) and Ghana Conference on Religion for Peace (GCRP) should be strengthened and made into a strong coalition through which religion can effectively contribute to the tutelage of the fundamental human rights and freedoms of the citizenry. 3.12 GENERAL RECOMMENDATIONS 3.12.1 Formation Of Private Army 3.12.1.1 Any military establishment, such as the defunct Presidential Detail Department (PDD) in particular, the President's Own Guard Regiment (POGR) and the Commando Units, which does not operate under the command of the traditional Security Services, is to be considered a private army. The formation of such an army is against the spirit and letter of the national Constitution, and should, under no circumstance, be tolerated in the country. 3.12.2 Politicisation Of The Security Services (Including the Military Institution)

Reference 345 - 0.03% Coverage

3.12.8.1 A culture of tolerance should be developed in this country. Ghanaians should learn that it is acceptable for people, even friends, to disagree. Dissent on issues should be encouraged and there should be space for alternative voices to be heard. 3.12.9 Re-presenting Ghana's History 3.12.9.1 The correct facts of Ghana's history must be taught in schools. To this end, school textbooks should be re-written, to ensure that all the patriots of Ghana's Independence get their rightful place in the nation's history. Historical accounts that glorify only those who attained political power at particular points in time do a disservice to dissenters, and those who sought to fight dictatorship and other evils in governance. 3.12.9.2 NCCE should design appropriate civic education materials for use in schools to inculcate patriotism and voluntarism among pupils and students. The National Anthem and the National Pledge must be taught and used in all schools on a daily basis. 3.12.10 Standards Of Decency 3.12.10.1 Ghanaians must strive to develop common standards of morality and decency. These standards would guide the behaviour of citizens in general, as well as holders of public office. 3.12.10.2 Public institutions charged with the protection of Human Rights as well as societal watchdogs such as the press, should not in their turn perpetrate human rights abuses by abusing their power. In a situation of poverty, some persons within these bodies yield to the temptation to abuse their power for personal profit. 3.12.11 Dealing with Ethnocentrism 3.12.11.1 The maintenance of national cohesion is a subject that should engage the attention of all well-meaning Ghanaians. Persistent denials of the existence of Ethnocentrism in the country in general and in public life in particular, will not make the problems disappear. Ethnocentrism must be acknowledged for the great evil that it is, and the dangers it presents to our nationhood, national cohesion and the equitable distribution of national resources must be constantly attacked. The benefits of our national diversity must be celebrated. 3.12.11.2 Specific policies and programmes targeted at addressing issues generated by ethnic animosities, ethnic stereotypes and ethnocentrism as a basis for discrimination must be vigorously confronted. Anti-discrimination legislation must be adopted to give people a remedy whenever they can prove discrimination on any of the grounds set down in Article 17 of the Constitution of 1992. Some countries have achieved a measure of success in combating such problems, not by pious injunctions and exhortations, but by legislation and the conversion of such conduct into wrongful conduct, entitling a wronged person to damages. Ghana must adopt such methods, for nothing short of frontal assault would be effective in tackling ethnocentrism.

Reference 346 - 0.02% Coverage

2.2.2 Even though the Act does not mandate the Commission to disburse reparation, having investigated complaints of human rights violations and abuses and having identified victims in accordance with section 4 of Act 611, it is better suited to recommend appropriate reparations for implementation by any body or bodies that would be established in accordance with section 20 (2)(h).

2.2.3 Secondly, Chapter 15 of the Constitution, 1992, entrenches the fundamental rights and freedoms of every person in Ghana and same shall be respected by the State, its agencies as well as individuals. It also provides specifically for circumstances under which victims of human rights violations shall seek redress as well as provisions for the payment of compensation by violators. Reparation for human rights violation is, therefore, a right the individual is entitled to, and not a favour.

2.2.4 Best practices in international law provide another legal basis for the Commission's recommendation on reparation. Within the framework of international human rights, a consensus is evolving regarding the obligation to protect fundamental human rights and freedoms, and the right to seek redress when these rights are violated. A right to seek redress implies a duty to ensure that appropriate steps (including reparation) are taken to address any violation.

2.2.5 Lastly, Ghana is a party to major international treaties that assert the inviolability of fundamental human rights, the same rights that the Commission was set up to investigate. All of these treaties have provisions regarding the right of victims to remedy, such as compensation.

Reference 347 - 0.01% Coverage

The 1992 Constitution entrenches the fundamental rights and freedoms of the individual, which shall be respected by the State, its agencies and individuals and a corresponding right to seek redress when these rights are violated. A principal objective of this reparations policy is to reinforce the citizen's right to redress as well as the responsibility of the State to conduct itself in a manner based on respect for human rights, the rule of law and democratic accountability.

Reference 348 - 0.01% Coverage

Another major objective of the reparations policy is to achieve two forms of recognition: recognition of victimhood and recognition of accountability. The first means acknowledging that the treatment to which the victim was subjected constitutes a serious human rights violation or abuse. The second means that, no matter how long it takes, the

Reference 349 - 0.01% Coverage

Through reparations, the Commission seeks to, somehow alleviate the suffering of victims (direct or indirect) of human rights violations and to help them carry on with their lives.

Reference 350 - 0.01% Coverage

While the award of reparation, by its very nature is backward-looking, it also serves a forward-looking purpose, to the extent that it provides a basis for non-repetition. In that respect it is the objective of the Commission that through the reparations package, the nation will be motivated to resolve that "Never Again" shall the State facilitate or preside over such gross human rights violations.

Reference 351 - 0.01% Coverage

Reparation will be recommended for everyone against whom human rights violations will be established, there will be no distinction between the well-placed in society and the ordinary victim, who is usually voiceless and lacks the means to take on the highly placed and powerful in society. One of the objectives of the reparations policy is to underscore respect for all individuals, irrespective of their social or economic status.

Reference 352 - 0.01% Coverage

In making its recommendations for reparation, the Commission is striving to achieve a balance between the need to redress human rights violations and the resource constraints that confront the nation. As already stated, reparations can never fully repair the damage caused to victims nor restore them to the status quo ante. However, recommendations, which do not take account of the resource limitations of the nation, will make implementation a difficult and a long drawn-out enterprise and therefore exacerbate the pain of victims.

Reference 353 - 0.01% Coverage

violation suffered by specific victims of egregious human rights violations. Apology (radio and television broadcast) by heads of public institutions that are identified as main actors in the violation of the rights of individuals. For example an apology from the President as the Head of State and Commander-in-Chief of the Ghana Armed Forces. A special apology from the President to the Ghanaian woman for the indignities and

Reference 354 - 0.01% Coverage

lost their lives as a result of human rights violation) and to the unknown victim of human rights abuse during the Commission's mandate period. On the monument shall be engraved the names of the victims who fall in this category, such as the Generals, the three High Court Judges and retired Army Officer, those executed after sham trials fraught with severe torture and serious procedural irregularities and the unknown victims. A monument to be erected in honour of the Ghanaian woman. Monuments in the regional capitals in honour of traders, and other civilians. A National Reconciliation Day: a one-off commemorative day, not an annual affair,

Reference 355 - 0.01% Coverage

These could be sold to raise money for the Rehabilitation Fund. Annual Reconciliation Lectures to foster respect for human rights, rule of law and

Reference 356 - 0.01% Coverage

of victims o Persons who lost their lives as a result of human rights violation o The disappeared o Persons disabled as a result of human rights violation o Traders whose goods were seized

Reference 357 - 0.01% Coverage

2.4.1.6.1 For those living with health problems as a result of human rights violation, the NHIS, which is about to take off, should take care of their concerns.

Reference 358 - 0.01% Coverage

2.4.3.1 This is by no means payment for human rights violations because money, like any other form of compensation, can never restore victims to the status quo ante. Besides, it is impossible to quantify in money or money's worth, losses as well as the physical, emotional, mental and psychological agony that victims and/or families have been through.

Reference 359 - 0.01% Coverage

2.4.3.3 PROPOSED AMOUNTS Loss of life resulting from human rights violation – killings• 30m• 20m –

Reference 360 - 0.01% Coverage

Implied in any award of reparation, is an attempt to repair the harm and damage caused to victims. The Commission acknowledges that reparations, no matter how generous or well-intentioned cannot restore the victim to the status quo ante. That is why everything should be done to guard against human rights violation.

Reference 361 - 0.01% Coverage

1. Introduction and Facts about Statement Taking In order to fulfill its mandate, the Commission collected statements from victims, witnesses and alleged perpetrators of human rights violations and abuses committed during the mandate period (i.e., 6th March, 1957 – 6th January, 1992). The collection of statements which began on 3rd September, 2002 officially ended on 13th January, 2004, with about 4,240 statements collected from Ghanaians living in Ghana and abroad.

Reference 362 - 0.01% Coverage

It was important to extract information from the statements about each of the human rights violations and abuses received, enter this information into a database, and obtain statistics that described the nature and extent of the violations experienced and perpetrated by the statement-makers as a whole.

Reference 363 - 0.01% Coverage

The main purpose of coding was to facilitate the production of meaningful human rights statistics. This was done by using a controlled vocabulary to transform the information on violations, victims, perpetrators and other relevant information into a quantifiable set of data categories. The main source of information was the written petitions/statements of the statement-makers. A classification system was developed in order to fulfill the relevant parts of the Commission's mandate, i.e., the violations considered must be representative of those that typically occurred during the periods under investigation. Similarly, for the victims, the data had to capture the aspects of a person that determined whether he or she were targeted for abuse or that determined types of abuse that he or she suffered. These are details such as their age, sex and ethnicity.

Reference 364 - 0.01% Coverage

The vocabularies were created and tested under the direction of a field consultant from the Benetech Human Rights Data Analysis Group with initial sponsorship from the Open Society Initiative – West Africa, arranged by the International Center for Transitional Justice (ICTJ). Subsequent assistance was provided by the American Association for the Advancement of Science (AAAS), Science and Human Rights Program (SHR) and Benetech Human Rights Program. To ensure that the vocabularies were appropriate, a variety of sources were used. These included knowledge about the country, the citizenry, local experts and also with reference to the statements gathered by the Commission.

The model adopted by the Commission was based on that proposed in the book, *Who Did What to Whom? Planning and Implementing a Large-Scale Human Rights Data Project*. It is a model known to produce valid statistical results and has been used extensively by other truth commissions and human rights documentation projects.

Reference 365 - 0.02% Coverage

4.7.3.5 The chapter has also highlighted the mistreatment or otherwise of some of the leaders of these organizations and other prominent activists, either because the patron governments had been overthrown, or because their activities were a challenge to the sitting government. It has also discussed the nature of the relationship between members and leadership of these movements and government during their period of office, as well as the extent of political patronage that they enjoyed, leading to their being active perpetrators of human rights abuses or violations, against their own membership, as well as against the citizenry at large.

4.7.3.6 Workers' organizations throughout the mandate period have suffered from governmental interference, as well as manipulation for partisan purposes. Whenever the leaders lost focus or became interested in feathering their own political nests, then a perversion of their mission occurred; however, whenever they insisted on sticking to their mission, the leaders often ended up paying a price, through detentions and even exile. At various points during the mandate period, the leaders either became instruments through which their organizations were emasculated or controlled and misused by the government, or they themselves became involved in the perpetration of human rights abuses.

Reference 366 - 0.01% Coverage

5.0.1 In reporting on the human rights violations and abuses that occurred during the mandate period, the Commission considered whether or not professional associations and other civil society groups had contributed to the violation or the protection of individual human rights. The scope of this chapter is restricted to the activities of the Association of Recognised Professional Bodies (ARPB), as well as those voluntary and/or political associations that had an impact on the human rights landscape. Consequently, the

Reference 367 - 0.01% Coverage

5.0.2 The Commission believes that a study of the activities of these movements during the mandate period would enable the nation appreciate their importance in the sociopolitical history of Ghana; be provided with the reasons for change or continuity in these movements; understand why the movements underwent a transformation or ceased to exist altogether, and above all assess their impact on the development or otherwise of a culture of respect for human rights.

Reference 368 - 0.01% Coverage

5.3.1.2 This group, re-named the Legon Society on National Affairs (LSNA), played a human rights advocacy role through its mouthpiece, The Legon Observer. This was its official platform, although very often, it was individual members of the LSNA who protested human rights abuses by the NLC. During this period the official body of university teachers, University Teachers Association of Ghana (UTAG), confined itself to its trade union functions.

5.3.1.3 The LSNA made a "vow" to the nation that it was resolved "to give loyal support to the NLC" in its drive to consolidate freedom and democracy in the country. Though the LSNA was critical of certain NLC policies, its avowed opposition to the CPP compromised its ability to protest at the serious infringements on the human rights of CPP officials and activists.

Reference 369 - 0.01% Coverage

5.5.1.1 The direct involvement of professional bodies in Ghanaian politics can be dated to the 1970s. In the 1970s, their engagement in politics became pronounced when the economy of the country began to show signs of collapse, as a result of misrule and mismanagement of the military rulers. The return of the country to constitutional or civilian rule became the dominant objective, obscuring any other concerns. Before this time, involvement in Ghanaian politics had been the province of individuals (professional or not) and private (non-professional) associations, who would comment on human rights issues selectively and periodically. In general the professional groups, whose members constituted the cream of Ghanaian society, showed the same attribute as the general population, in terms of the lack of appreciation of the intrinsic value of human rights, and of the need for commitment to defend and promote the enjoyment of human rights for all persons.

Reference 370 - 0.01% Coverage

5.7.8 The short AFRC tenure graphically illustrated this lack of human rights culture that would move individuals and groups to struggle in defence of human rights. In other instances, the elites led the entire country to condone human rights violations. The leaders of the registered political parties, then engaged in electoral contest for power, were seemingly concerned more about securing the transition programme so that power would be transferred to one of them. The widespread human rights abuses that were committed by the AFRC appeared not to be their primary concern, until after the first round of the elections, when the top five political parties issued a joint statement expressing concern about the executions. They also urged the government to uphold the rule of law in all cases where a crime was alleged to have been committed.

Reference 371 - 0.02% Coverage

5.9.1 The Provisional National Defence Council (PNDC) came to power on 31st December, 1981, after a coup d'état led by Flt Lt Jerry John Rawlings, who became Chairman of PNDC and Head of State. There were human rights abuses during the PNDC era. People were assaulted, brutalized, maimed, imprisoned, abducted and killed. Others had their properties seized, vandalized or confiscated. In fact the PNDC period was a period of lawlessness, when the rule of law had completely broken down in the Ghanaian society, and citizens' rights, freedom and liberties were thus taken away from them.

5.9.2 Under the PNDC, when some of the most heinous crimes were committed against fellow Ghanaians, the lack of a culture of human rights struggle, became very obvious. In 1982, resistance to the PNDC by the GBA and ARPB was driven as much by the demand for the restoration of constitutional rule, as by a commitment to defend human rights, although the struggle was not couched in human rights language.

Gross human rights violations took place, and were rampant. The murder of the three High Court Judges and a retired Army Officer, shook the rank and file of Ghanaian citizenry, as much because of the gruesome nature of the killings, as by the fact that Ghanaians deeply valued the sanctity of life. However, those horrendous acts could not ignite a movement to stop further human rights abuses, even though the protests and condemnations by the ARPB, religious and other civic bodies were loud and consistent.

Reference 372 - 0.01% Coverage

Since the 31st December 1981, the law of the jungle has taken over a once decent and law abiding people of Ghana. Law and order has broken down and there is callous disregard for Human Rights and Fundamental Freedoms.

Reference 373 - 0.01% Coverage

5.16.5.9 The banning of the old political parties and the prohibition of the use of their symbols under the Political Parties Law, was seen by the leaders of the new political parties as a violation of the fundamental human rights, in particular, freedom of association. They therefore decided to contest the issue in court, and 29 persons, all leaders of the opposition, joined in the suit. They were led by K A Gbedemah, and included such prominent politicians as B.J. da Rocha, Dr. Hilla Limann, and Professor A. Adu Boahen. They sought a declaration that the Political Parties Law as published by the PNDC was a violation of the fundamental human rights of freedom of association of Ghanaians.

Reference 374 - 0.01% Coverage

Professional Bodies and Civil Society Organizations are generally expected, by virtue of their learning and expertise, to be more concerned about and more actively involved in human rights issues and, therefore, spearhead the fight against human rights violations and abuses.

5.17.2 Admittedly, some voices were raised by some of the Professional Bodies and Civil Society organizations at gross human rights violations and abuses during the mandate period. However, these were too feeble, too sporadic and too disjointed to make the desired impact on society, because it was generally felt by professionals that human rights issues are the preserve of political parties and that politics was a vocation that could not be mixed with one's professional practice. Thus, the culture of respect for, and tutelage of human rights per se was hardly one of the objects of the Professional Bodies and Civil Society organizations dealt with in this chapter.

Reference 375 - 0.02% Coverage

and the Civil Society Organizations, were very active in the fight for constitutional governance, in particular, during the latter days of the SMC I, through the short-lived SMC II, the AFRC days and finally, during the PNDC regime. The ARPB deserves commendation; it was the loudest voice of opposition, at the time, to unconstitutionality, which was and gave rise to several gross violations and abuses of the human rights of the citizenry

5.17.4 Professional Bodies should not confine themselves to the pecuniary interests of their respective associations alone, but also avail themselves of the opportunity to make human rights interventions when necessary. They should make human rights education and protection an integral part of their professional responsibility and ethics.

5.17.5 Of the four Civil Society Organizations that sprang from the roots of the AFRC Revolution that are discussed in this chapter, only the MFJ was anti-PNDC right from its inception. The others, NDM, KNRG

and DWM were overtly pro-PNDC, and therefore saw nothing wrong vis-à-vis human rights issues of the regime. Their concerns were merely ideological, or were focused on widening the support base for the PNDC, and could not be said to have championed human rights issues per se.

Reference 376 - 0.01% Coverage

5.17.7 During the mandate period, political parties however, had a lot to do either defending human rights or violating them or even condoning with their violations and abuse. In the pre-Independence period, political associations and groupings were themselves founded, based inadvertently or otherwise, on considerations that promoted one abuse or the other of human and social rights. They were mostly founded on ethnic

Reference 377 - 0.02% Coverage

5.17.8 Throughout the mandate period, however, the two main political traditions, namely, the CPP and the UP took turns in violating and abusing the human rights of sections of the citizenry, or in condoning violations and abuses as and when they (the parties) were in power or were allied with the military regime that had usurped constitutional governance. Thus, one cannot say of the political parties that they pursued an agenda of championing human rights. Indeed, when in power, they abused and violated them and seemed insensitive to the human rights of those supposedly in opposition.

5.17.9 Invariably, these political parties and their membership too suffered violations and abuses of their human and institutional rights, whenever their governments were ousted in the military take-overs that characterized the mandate period. The power to suppress the human rights of the opponent, was seen as one of the spoils of victory over the opponent.

5.17.10 All said and done, there was not, indeed, a good or even fair sense of the notion of fighting human rights causes, let alone their respect and support among the elite, the leadership and practitioners of party politics. This is a serious shortcoming that calls for remedial action. There is the need to inculcate into the rank and file of the citizenry and also into institutions and organizations such as Professional Bodies and Civil Society Organizations, the need to champion, and so develop the culture of respect for the human and civil rights of all.

Reference 378 - 0.01% Coverage

5.17.13 Civil Society must take its share of the blame in the events that have produced massive human rights abuses in the country. It must now be appreciated by all, that taking to the streets and dancing to welcome a usurper, has always been the first step towards condoning, and even giving approval to, all human rights abuses committed by a particular regime. The need to know, respect, uphold and defend human rights is of paramount importance in the march for peace, freedom and justice.

Reference 379 - 0.01% Coverage

6.0.1 The Commission set out to examine the socio-political environment within which human rights abuses have occurred within the mandate period, and the role played by students, organized as political party wings on the campuses, as Student Representative Councils (SRCs), or as a movement known as the National Union of Ghana Students (NUGS). This chapter has chronicled the activities of the student movements during the mandate period, and has thrown some light on the experiences of their leaders and other prominent activists, either when the patron-governments were overthrown, or because their

activities were a challenge to the sitting government. The Commission did not include in its focus of study, movements on the student-front that were not of political significance.

Reference 380 - 0.01% Coverage

6.7.2.8 On Saturday, 30th June, the Chairman of the AFRC, Flt Lt Rawlings, in a dawn broadcast, informed the nation and "friends of Ghana" that there would be no more executions of people convicted by the Special Courts of the AFRC. Instead, such persons would be sentenced to penal servitude on penal farms and their properties confiscated. Flt Lt Rawlings stated that the AFRC " had taken note of the special appeals for restraint from the world community especially those from sister African states". He assured Ghana's friends that Ghana had not abandoned the rule of law and its adherence to the principles of United Nations Declarations on Human Rights, but appealed to them to

Reference 381 - 0.01% Coverage

6.7.3.4 At the British High Commission and the American Embassy, the national flags of the two countries were torn into shreds. The students in their protest note addressed to Her Majesty Queen Elizabeth II through the British High Commissioner, stated that from recent developments, they were convinced that the British government decided to accord recognition to the AFRC in order to protect its trade links with Ghana. They also pointed out that they believed Britain's protestations about human rights in Ghana were meaningless since the protest was not backed by action to meet the basic needs of the people in terms of food, housing, clothing, transport and education. The students also drew the attention of the British Government to their own acts of oppression of human rights in Northern Ireland, Nigeria, South Africa and Rhodesia. Although the demonstration was described as peaceful and decent by Edward Holmes, Chargé d'Affaires at the American Embassy, his only regret was that the students had torn the American flag into pieces.

Reference 382 - 0.01% Coverage

6.9.4.23 A few months later, NUGS joined a group known as the Coordinating Committee of Democratic Forces (CCDF) that organized press conferences, beginning from 6th August 1991, to take a stand on the need for a return to civilian rule. The group was said to be open to "all independent organizations that stand for multiparty democracy, respect for fundamental human rights, the rule of law and the sovereignty of the people of Ghana." (emphases in original). The need to form the group was made manifest "by the continued intransigence of the PNDC in the face of popular and democratic demands and by the need to unite all democratic forces to press forward, with greater effect, the struggle for democracy in Ghana and the assertion of the sovereignty of her people".

Reference 383 - 0.01% Coverage

6.10.2 It is obvious that the student movement played a big role in national affairs during the mandate period. It was also observable that the role got even larger during periods of unconstitutional government than during periods of constitutional rule. During the AFRC days in 1979, it became a partner of government as it put its numbers behind every policy of the government. It participated actively in the events that resulted in massive human rights abuses. The student movement will never live down the moment when it made the call "Let the blood flow", in agitation for more executions. During the first few days of 1982, it was also counted on as a base for support when the PNDC came to power.

Reference 384 - 0.01% Coverage

7.0.1 The task of the Commission was to determine whether or not the youth movements had contributed to the violation or protection of human rights during the mandate period. The chapter has chronicled the activities of the politically-inclined youth movements of the mandate period. In the main, these were the Boy Scouts and Girl Guides Movements; Ghana Young Pioneers movement (GYP); the National Youth Service Corps (NYSC); the June Four Movement (JFM); the People's Revolutionary League of Ghana (PRLG); and the Movement on National Affairs (MONAS). The chapter endeavours to shed some light on their activities, mode of organization and funding. In addition, the impact of their activities on the human rights terrain is also highlighted. In this regard, the fate suffered by their leaders and other prominent activists when the governments that sponsored them were removed from office. It also discusses the nature of the relationship between members and leadership of these movements and government during their period of office.

Reference 385 - 0.01% Coverage

day seminar was organized for them by the Military authorities at Ho, under the theme "The role of Scouts and Girl Guides in the Revolution". The seminar, reported to have attracted over 400 members of the associations, was intended to educate the membership of the associations to respect the human rights of the citizenry even though they were expected to assist in exposing economic saboteurs.

Reference 386 - 0.01% Coverage

7.8.2 The Youth Associations that were born out of the 4th June, 1979 Uprising, brought together young people with energy and drive, who defended the idea to which they had given their support. They were behind many of the human rights violations and abuses that occurred, as, in their youthful exuberance, they urged "revolutionary" punitive measures against "enemies of the revolution". They competed for control over power at the national level, with deadly consequences for some of its members.

7.8.3 Other youth groups that were meant to provide moral training for young people, such as the Boy Scouts, corrupted their mission and perverted their existence by joining in activities that resulted in the perpetration of human rights abuses on the communities in which they operated, particularly against women traders.

Volume 4 Chapter 8 - The Role Of Chiefs - Complicity Or Resistance To Human

Rights Abuses CHAPTER EIGHT

THE ROLE OF CHIEFS - COMPLICITY OR RESISTANCE TO HUMAN RIGHTS ABUSES FROM 6TH MARCH, 1957 -- 6TH JANUARY, 1993

Reference 387 - 0.01% Coverage

8.0.1 This chapter deals with the role that chiefs have played in the political history of Ghana between the period 6th March, 1957, and 6th January, 1993. The assessment of the role of chiefs is done with specific reference to their efforts in the protection or otherwise, of human rights. One fact that became obvious from the work of the Commission was that, the chiefs themselves were often victims of human rights abuses, and that the chieftaincy institution suffered human rights abuses more than any other institutions, during the mandate period.

Reference 388 - 0.01% Coverage

8.4.1.8 It could be said therefore, that the situation in Ghana during the administration of the First Republic, was one in which chiefs could not fight against the human rights violations that were perpetrated by the government. Some chiefs were, in fact, themselves victims of human rights abuse, under the recognition clause of Act 81 and the Preventive Detention Act, 1958.

Reference 389 - 0.01% Coverage

8.4.11. 12 It could be said that Dr. Nkrumah and the CPP dealt a heavier blow to chiefs and chieftaincy by the introduction of Regional Political Representatives, Reduction of funds, the recognition clause, and the introduction of Preventive Detention Act, than any acts of the colonial government. The only way for the chiefs to survive was for them to openly support the government in power or to keep silent, even in the face of human rights abuses and violations.

Reference 390 - 0.01% Coverage

8.7.1.5 In 1975, the NRC was transformed into the Supreme Military Council (SMC). During the campaign for Union Government (UNIGOV), the SMC committed a series of human rights violations. In all these instances of human rights abuses, the chiefs were silent. On the contrary, they trooped to the Castle and pledged "unflinching support" to Gen Acheampong and praised Unigov as a divinely inspired concept to cure the ills of partisan politics.

Reference 391 - 0.01% Coverage

8.8.1.2 The AFRC Government under the policy of "house-cleaning" perpetrated and permitted the perpetration of serious of human rights violations and abuses, during its short tenure of office. Notable among such acts were: the execution of eight senior military officers including three former Heads of State; killings; the public flogging of Ghanaian citizens, some of whom were stripped naked; seizure and the destruction of property; the demolition of houses, markets and market stalls; rampant searches of citizens for acts of hoarding; and detentions without due process. All these acts of human rights violations and abuses, demanded public or institutional protests or at least criticism, but there was none.

Reference 392 - 0.01% Coverage

8.10.1.4 Upon assuming power, the PNDC Government declared a "Holy War" to clamp down on kalabule, and in the process, perpetrated widespread human rights violations and abuses. These violations included killings, disappearances, the violent seizure and occupation of private and public property respectively, the beating up and harassment of citizens, the detention of political opponents, torture of suspects and the wrongful dismissal of hundreds of people from their employment. Notable among the human rights abuses of the period was the kidnap and murder of three High Court Judges and a retired Army Officer. In all these cases, soldiers and/or other agents of the PNDC Government were to a large extent, the perpetrators of these violations.

8.10.1.5 As had happened during previous military takeovers, chiefs openly expressed support for the PNDC coup. For this reason, the chiefs were not able to speak against the myriad of human rights abuses that occurred during the era of the PNDC Government. There is no evidence that chiefs complained about the numerous human rights violations that took place during PNDC era.

Reference 393 - 0.01% Coverage

8.10.1.8 It is to be noted that the activities for which the chiefs supported the PNDC Government were not bad in themselves. Indeed, it was morally binding on them to help the government of the day succeed. What was regrettable, however, was that they all appeared to be interested in championing the cause of the new government, to the neglect of the human rights abuses suffered, both by themselves and some of their subjects at the hands of the very government to whom they had made pledges of support. Even though the chiefs appeared to be acting in favour of national development and aspirations, they failed to speak up for those who were undergoing abusive treatment.

Reference 394 - 0.01% Coverage

8.12.4 During the mandate period, the governments, especially the military ones, courted chiefs for support, and chiefs courted government for development projects. Many chiefs sought partnerships with the government of the day with the hope of using their contacts to secure projects for their respective traditional areas. Accordingly, chiefs usually expressed full support for a government as soon as the old government was overthrown. They thus rendered themselves liable to the tag of collaborators of whatever human rights abuses were perpetrated by the various governments.

8.12.5 Another consequence of such act of collaboration was that it weakened the independence of the chieftaincy institution, and created a situation where the individual chiefs could not be critical of sitting governments, and therefore could not offer their subjects any protection when it came to government-sponsored human rights violations and abuse.

Reference 395 - 0.01% Coverage

8.12.7 Within the mandate period, chiefs did not exert their collective influence to protest against any of the violence and excesses that emanated from military regimes nor did they confront civilian governments on issues of human rights violations. The Regional and National Houses of Chiefs still remain an untapped asset for strengthening the influence of chiefs in the governance of the country.

Volume 4 Chapter 9 - The Role Of Religious Bodies – Complicity Or Resistance To Human Rights Abuses

Reference 396 - 0.01% Coverage

THE ROLE OF RELIGIOUS BODIES – COMPLICITY OR RESISTANCE TO HUMAN RIGHTS ABUSES

Reference 397 - 0.02% Coverage

9.0.1 The interventions of religious bodies on matters of social concern, especially sociopolitical issues, have always carried weight. Therefore, the protest or silence by these bodies or institutions, on human rights violations and abuses influences the perceptions of many people in Ghana. To facilitate the assessment of the role, if any, of religious bodies regarding the complicity or resistance to human rights violations from 6th March, 1957 to 6th January, 1993, the Commission focused its work on the Churches in Ghana, the Islamic religion, both the Orthodox and the Ahmadiyya Muslim Mission, the Traditional Religious groups with reference, particularly, to the Afrikania Mission.

9.0.2 The religious bodies are the conscience of the nation. In this regard, they are expected to be able to point out abuses, and work to protect and defend the rights of all Ghanaians, with a view to bringing about improvement and progress in socio-political life. religious bodies can transform individuals in society, and bring about social change that prevent human rights violations and abuses. Consequently, the following roles are expected of them • to provide prophetic witnessing; • to oppose human rights abuses in society; • to build awareness on morality and human rights issues; • to provide moral education;

- to seek moral transformation through advocacy; • to speak clearly and without equivocation and provide moral direction on important moral issues; and • to counsel, exhort, warn or commend the leaders and general citizenry, as and when the occasion demands.

Reference 398 - 0.01% Coverage

9.0.3 The focus of this chapter is to examine the role of religious bodies in spearheading resistance to human rights abuses, contributing to the promotion of respect for human rights, as well as the impact that these activities had on the human rights landscape during the mandate period. The chapter also highlights the significance of statements, communiqués, pastoral letters, Press releases etc, from these religious bodies, at the critical times when they were issued. It is hoped that the religious bodies would be strengthened to keep up with their advocacy role and continue to provide moral guidance to the nation.

Reference 399 - 0.01% Coverage

9.1.1.3 The role that traditional religion played in human rights abuse was an indirect one. Rumours of rituals for protection have become part of our socio-political culture. The phenomenon of ritual murder has been part of the Ghanaian system of cultural beliefs, and has, in fact, gained prominence in legends and folktales. This phenomenon has also served as explanation for strange or extraordinary homicide cases in the country.

Reference 400 - 0.01% Coverage

9.1.3.1 Traditional religion has also been linked to human rights abuse on account of the widely-held belief that through the use of human parts, rituals could be performed to affect the material circumstances of the individual making the request. Consequently, some individuals were killed for purposes that must have been related to the performance of rituals. The circumstances surrounding certain killings that occurred, and the way the dead bodies were found, lent credence to the suspicion that they were not ordinary murders. Very often the bodies were found mutilated with some vital parts missing. A number of murder cases reported in some parts of Ghana in the 1980s fall into this category. For instance, in January, 1981, the body of Kingsley Ackaah, alias Kwame

Reference 401 - 0.01% Coverage

9.1.5.2. Trokosi practice is now mainly regarded as a means of averting the wrath of the gods. This is done by invoking the gods for mercy, in cases where an offence has been reported to the shrine. It is also a traditional judicial system, but one fraught with serious human rights violations, as the practice involves the incarceration and abuse of innocent young women. The practice of Trokosi is now recognized to be akin to slavery. The predominant modern view is that the Trokosi system is obnoxious, inhuman and a violation of the human rights of the persons involved, and therefore must be stopped.

Reference 402 - 0.01% Coverage

9.2.4.2 The issue of human rights abuses during the NLC against certain individuals that raised public concerns were the public ridicule of Boye Moses, one of Dr. Nkrumah's security aides, who was paraded in a cage on the streets of Accra, the strike involving the mine workers of Ashanti Goldfields in Obuasi, during which three of the workers were shot dead by the police, and the decision of the government to

ban most of the leading members of the former CPP from contesting the 1969 general elections. All these violations did not elicit any comment from the Muslim communities and their leaders at the time. In short nothing much can be said about the activities of Muslim Organizations under this regime.

Reference 403 - 0.01% Coverage

9.2.6.1.9 Having openly declared their support for UNIGOV, they were not in a position to criticise the human rights abuses that the regime indulged in, during the campaign for the referendum on Unigov.

Reference 404 - 0.02% Coverage

9.2.10.3 Generally, the Muslim communities feared that colonial rule would impose Christianity on them. This led the Muslim communities in Ghana to isolate themselves from active participation as a group to react to issues, which bordered on human rights abuses against either them or other people in society.

9.2.10.4 It could therefore be said that Muslims in Ghana had, never as a group, championed any cause, when it came to issues of public agitation against human rights violations and abuses. During military takeovers in Ghana, people were maltreated, maimed, whipped, killed and some properties were seized, but none of these produced official comment from the Muslim Community. This is not surprising since at most times the leaders of the new Muslim unity organizations were handpicked by the government of the day. The result of this silence has been the marginalization of Muslims in issues relating to the protection of human rights. Apart from a few Muslims in politics, the Muslim communities have not been politically active in terms of formal protests or endorsement of government policies and directives. The Ghana Muslim Mission was not in favour of the Preventive Detention Act, yet because of its non-political stance, the Mission could not officially and openly condemn the Act, although some of its members suffered under it.

Reference 405 - 0.01% Coverage

9.2.10.7 Neither the Ahmadiyya Muslim Mission nor the Orthodox Muslims supported brutalities, killings, seizure of property and other related human rights violation. However, although they frowned on human rights violations such as flogging in public, detention without trial and the parading of human beings in iron-cage, they did not openly protest those atrocities.

Reference 406 - 0.01% Coverage

9.3.1.3 In Ghana, some leaders of the various Christian religious groups have been vocal in drawing government's attention to what is seen as human rights violations abuses in Ghana's political life. Christian religious bodies and successive governments have sometimes collaborated in various areas, especially on issues of socio-culture interest, because in Ghana there has not been a clear distinction between the sacred and the secular.

Reference 407 - 0.01% Coverage

ideologies, laws, and pronouncements by certain personalities, which were perceived as blasphemies and in contravention of international human rights laws.

Reference 408 - 0.01% Coverage

9.3.2.10 Between 1957 and up to the overthrow of the CPP Government in 1966, the Christian religious bodies mainly played a human rights advocacy role under the name of the Christian Council of Ghana. The Catholic Church also later joined in this crusade. During this era, the issues of concern included the introduction of the Preventive Detention Act (PDA), the Deportation Act and the bomb-throwing outrages that resulted in many deaths, especially those of GYP, in the 1960s.

Reference 409 - 0.01% Coverage

9.3.3.2 Following the overthrow, CPP office holders and other government functionaries were detained without trial. Indeed, one of the security men of President Nkrumah, Boye Moses, was put in a cage and paraded through the principal streets of Accra, amidst public ridicule. The security apparatus of the President had been so feared and hated, that no one gave a thought as to what ill-treatment was being meted out to those who constituted it; and so no one, not even the Churches, condemned this undignified treatment of a human being, and the violation of Boye Moses' human rights, in particular.

Reference 410 - 0.03% Coverage

9.3.5.4 The Christian Council of Ghana, and the Ghana Catholic Bishops' Conference opposed Gen Acheampong's proposal for the formation of a Union Government (Unigov). This was to be a constitutional government, which was to have representation of the Armed Forces, the Police and civilians. The two religious bodies saw it as an attempt to perpetuate military rule in the country. As time went by, anti-military sentiments of the church leaders became more vehement, because of serious human rights abuses then being perpetrated by the government.

9.3.5.5 As wanton arrests and beatings continued, heads of the Christian Council and the Catholic Bishops' Conference issued a joint memorandum of protest, after a meeting with Gen Acheampong in which they protested against acts of arbitrary arrests. They specifically, protested the arrest and detention of K Addai-Mensah, National Secretary of the Ghana Bar Association, in Kumasi on 21st February, 1978; the brutal beating up of Peter Owusu Donkor, Headmaster of Opoku Ware Secondary School, as well as the Assistant Headmaster and students of Opoku Ware Secondary School; and students of Mfantshipim School in Cape Coast respectively, by supporters of the concept of Unigov. The Memorandum also protested the denial of such basic human rights as the freedom of speech and of association to the citizenry.

9.3.5.6 A pastoral letter by the Catholic Bishops' Conference condemned the human rights violations perpetrated by members of the security forces; and more particularly, complained about the denial of freedom of expression to such civil society organization as the People's Movement for Freedom and Justice (PMFJ) during the months preceding the referendum on the Unigov concept. The repression of the PMFJ was criticised as being the antithesis of government pronouncements on public education on the concept of Unigov, since the law-enforcement agencies should have been the ones to give protection to the PMFJ, and not the ones to lead in the molestation of citizens expressing their dissent. The pastoral letter also protested against the biased nature of the campaign, which was supposed to educate people on the impending referendum, as evidenced by the fact that members of the government and other personalities were either openly campaigning on behalf of Unigov or the so-called National Government.

Reference 411 - 0.01% Coverage

9.3.7.1 The 4th June, 1979 coup brought untold hardship to many Ghanaians for the first time in the annals of Ghana's political life. The AFRC regime lasted for only three-and-a-half months, but it perpetrated widespread human rights violations dubbed 'house cleaning', in the nature of killings, beatings, flogging in public, seizure of property and detentions. Some religious leaders pledged open

support for the "house cleaning" exercise by the AFRC Government, and even called for its extension to other social sectors.

Reference 412 - 0.01% Coverage

9.3.7.6 The AFRC Government had the shortest life-span in the annals of governance of this country. However, the atrocities perpetrated under this regime were phenomenal. The killing of the Senior Military Officers, the public flogging of people, some of whom were stripped naked, the seizure and destruction of people's property, were enough instances of human rights violations that caused great concern in the country. In the main, the Christian Religious Bodies protested against such acts of inhumanity.

Reference 413 - 0.01% Coverage

9.3.9.2 Early in the life of the PNDC, certain events occurred that caused the religious leaders to express disagreement with the government. The Catholic Church's unequivocal stand against human rights abuses was contained in a joint pastoral letter of the Catholic Hierarchy of Ghana on "Moral Conversion and National Reconstruction," issued on the occasion of the 1982 Easter celebration. This was to serve as the church's reaction to the political situation in the country at that time. The Catholic Church denounced violence of all kinds, including the arbitrary killings that were going on, emphasizing that each Ghanaian has the right to security of life and legitimate prosperity. The church, once again affirmed that each Ghanaian is bound by the divine commandment: "Thou Shalt Not Kill".

Reference 414 - 0.02% Coverage

9.3.9.10 In 1989, the government sought to control religious bodies by requiring that all religious bodies should be registered under the Religious Bodies Registration Law, 1989 (PNDCL 221). The Catholic Bishops' Conference and the Christian Council informed the Chairman of PNDC, by a joint memorandum on 11th August, 1989, of their displeasure at that law and refused to register under the Law. The message explained to the Chairman and members of the PNDC that the law constituted an infringement on the fundamental human rights of the basic freedom of worship as stated by article 18 of the Universal Declaration of Human Rights. The message further alleged that the Law also contravened article 8 of the African Charter on Human and Peoples' Rights, and even the government's own enabling Law, the Provisional National Defence Council (Establishment) Proclamation (Supplementary and Consequential Provisions) Law 1982, (PNDCL 42). Section 1(b) of PNDCL 42 which provided as follows: "Respect for fundamental human rights and for the dignity of human persons are to be cultivated among all sections of the society and established as part of the basis of social justice."

The religious bodies believed that the registration requirement was the first step in a bid to deny legal existence to those bodies that the PNDC might not favour. The Christian Religious Bodies in keeping with the ethics of rendering "service to mankind" protested against all the above-mentioned incidents of human rights abuses.

Reference 415 - 0.01% Coverage

9.4.5 From the facts outlined above, it is clear that Christian religious bodies have clashed with various governments that ruled Ghana. This was because of the particular stance that they took on certain human rights abuses perpetrated by these governments. In pursuance of their advocacy role, the religious bodies have engaged in activities in the form of issuing protest letters, communiqués, memoranda, pastoral letters etc. For example, the Christian Council of Ghana, and the Ghana National Catholic Secretariat

9.4.6 Religious bodies have members in every stratum of society. Consequently, the opinions and actions of the leaders of these bodies shape public morality and behaviour. The 'culture of silence' that pervaded the political fabric of Ghana during the days of the PNDC, had a serious impact on the advocacy role of the Christian religious bodies. All the same, the Christian religious bodies especially, the Christian Council of Ghana and the Catholic Bishops' Conference were always persistent and consistent in criticizing governments on human rights issues.

9.4.7 Instances of religious groups seriously engaging governments in terms of protests and other actions on human rights issues have been commendable, even though on a few occasion such protests fell short of expectation. On issues such as the Preventive Detention Act, the bomb outrages of the 1960s, the killing of the Senior Military Officers, the flogging of citizens in public, the demolition of public properties, the disappearance of certain individuals, and the abduction and gruesome murder of the three High Court Judges and a retired Officer of the Ghana Army, have all elicited protest from them.

9.4.8 It is hoped that now that some of the traditional religious groups are organized under the Afrikania Mission, they would be more vocal in speaking out on national issues as well as reforming some of their practices that constitute human rights abuse.

9.4.9 The Muslim groups should also be heard more on matters of human rights, so that the task of infusing morality into our governance would not be left to the Christian groups only. Already there are hopeful signs that the need to ingratiate themselves with ruling government has become a thing of the past, and so this should enable them to criticize the government whenever the need arises.

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Reference 1 - 0.01% Coverage

of historical injustices and gross violations of human rights (including violations of not just the traditional bodily integrity rights, but all of the aforementioned plus socioeconomic rights, corruption, land, and economic marginalization) over a forty-five year period would be a daunting task to complete in four years, much less two and

Reference 2 - 0.03% Coverage

After four years, we are truly humbled by the enormity of the task facing this great country of ours. While we have made a small, yet we hope significant, contribution to addressing the legacy of gross violations of human rights and historical injustices, there is much still to be done. Yet, we take faith in the reforms that have already occurred, including the adoption of the 2010 Constitution, and those currently in process. Even more importantly, we are humbled by and also draw strength from the millions of Kenyans who, in the face of sometimes insurmountable odds, struggle to provide for themselves, their families, their communities, and the nation at large. It is that spirit of perseverance in the face of adversity, the willingness and ability to rise up above such challenges with dignity and integrity, which we saw in Kenyans throughout this great land that gives us hope for the future of this beautiful country.

Reference 3 - 0.02% Coverage

The violence, bloodshed and destruction of the PEV shocked Kenyans into the realisation that their nation, long considered an island of peace and tranquillity, remained deeply divided since independence from British colonial rule in December 1963. It prompted a fresh opportunity for the country to examine the negative practices of the past five decades that contributed to a state that still holds sway in Kenya: normalization and institutionalization of gross violation of human rights, abuse of power and misuse of public office.

Reference 4 - 0.01% Coverage

In terms of the TJR Act, the Commission was inaugurated on 3 August 2009. The broad mandate of the Commission was to inquire into gross violation of human rights and historical injustices that occurred in Kenya from 12 December 1963 when Kenya became independent to 28 February 2008 when the Coalition Agreement was signed

Reference 5 - 0.04% Coverage

- The Commission finds that between 1895 and 1963, the British Colonial administration in Kenya was responsible for unspeakable and horrific gross violations of human rights. In order to establish its authority in Kenya, the colonial government employed violence on the local population on an unprecedented scale. Such violence included massacres, torture and ill-treatment and various forms of sexual violence. The Commission also finds that the British Colonial administration adopted a divide and rule approach to the local population that created a negative dynamic of ethnicity, the consequences of which are still being felt today. At the same time the Colonial administration stole large amounts of highly productive land from the local population, and removed communities from their ancestral lands.

- The Commission finds that between 1963 and 1978, President Jomo Kenyatta presided over a government that was responsible for numerous gross violations of human rights. These violations included: o in the context of Shifta War, killings, torture, collective punishment and denial of basic needs

Reference 6 - 0.01% Coverage

- The Commission finds that between 1978 and 2002, President Daniel Arap Moi presided over a government that was responsible for numerous gross violations of human rights. These violations include: o Massacres; o unlawful detentions, and systematic and widespread torture and ill-treatment of political and human rights activists;

Reference 7 - 0.01% Coverage

- The Commission finds that between 2002 and 2008, President Mwai Kibaki presided over a government that was responsible for numerous gross violations of human rights. These violations include: o unlawful detentions, torture and ill-treatment; o assassinations and extra judicial killings; and o economic crimes and grand corruption

Reference 8 - 0.02% Coverage

particularly the Kenya Police and the Kenya Army, have been the main perpetrators of bodily integrity violations of human rights in Kenya including massacres, enforced disappearances, torture and ill-treatment, and sexual violence.

- The Commission finds that Northern Kenya (comprising formerly of North Eastern Province, Upper Eastern and North Rift) has been the epicenter of gross violations of human rights by state security agencies. Almost without exception, security operations in Northern Kenya has been accompanied by massacres of largely innocent citizens, systematic and widespread torture, rape and sexual violence of girls and women, looting and burning of property and the killing and confiscation of cattle.

Reference 9 - 0.01% Coverage

- The Commission finds that women and girls have been the subject of state sanctioned systematic discrimination in all spheres of their life. Although discrimination against women and girls is rooted in patriarchal cultural practices, the state has traditionally failed to curb harmful traditional practices that affect women's enjoyment of human rights.

Reference 10 - 0.03% Coverage

The volume starts with a general overview of the political history of Kenya. This chapter provides the overall political context for understanding not only the other specific violations in this chapter, but also the violations and other materials in the rest of the Report. This general political overview is then supplemented by a description of the history of the state security agencies. While other agencies of the state were responsible for historical injustices and gross violations of human rights during the mandate period, the security agencies were both primarily responsible for many of the acts of commission discussed in this volume, as well as the acts of omission (the failure to provide security) that allowed many of the violations committed by non-state actors to occur.

Reference 11 - 0.02% Coverage

Political History: A general overview In order to contextualize gross violations of human rights and historical injustices that occurred during the mandate period, the Commission divided the political history of Kenya into four distinct epochs. These epochs correspond with the four political administrations that governed the country prior to and during the Commission's mandate period: • British colonial era (1895 to 1963); • President Jomo Kenyatta's era (1963 to 1978); • President Daniel arap Moi's era (1978 to 2002); and • President Mwai Kibaki's era (2002 to 2008).

Reference 12 - 0.01% Coverage

EXECUTIVE SUMMARY Volume I Factors that encouraged perpetuation of gross violations of human rights

Reference 13 - 0.01% Coverage

- The failure of the state to investigate and punish gross violations of human rights. The Commission finds that in most cases, the state has covered-up or down-played violations committed especially by state security agencies. During the entire mandate period (1963-2008), the state demonstrated no genuine commitment to investigate and punish atrocities and violation committed by its agents against innocent citizens.

Reference 14 - 0.03% Coverage

On 12 December 1963, Kenya gained independence from British rule. Independence came with high expectations and hopes. It signalled an end to practices that had been institutionalised under British rule; the end of racial segregation, detention camps, torture, massacres, unlawful killings and similar practices that had been institutionalised under colonialism. To the citizens of a new free nation, independence meant the return to lands from which they had been forcibly evicted and of which they had been dispossessed in order to pave the way for British settlers. It was supposed to be the beginning of political and economic emancipation; the start of respect for the rule of law, human rights and dignity and the laying down of the foundations and tenets of democracy. Many envisioned a newly invigorated, united nation.

Reference 15 - 0.02% Coverage

When movements arose to advocate for opening up of the democratic space and respect for human rights, President Moi's government unleashed a reign of terror. Between 1986 and 1997, hundreds of individuals were detained and tortured because they were suspected to be members of illegal organizations. The infamous Nyayo House torture chambers were designed and built during this period specifically for the purpose of terrorizing those who were critical of, or perceived to be critical of, the established regime.

Reference 16 - 0.02% Coverage

In December 2002, KANU was dislodged from power by NARC under the leadership of President Mwai Kibaki. As a political party, NARC came to power on a platform that promised to curb and ultimately eliminate the political transgressions and human rights violations that had become so common during the 39 years of KANU's rule. NARC also pledged to address and rectify historical injustices. True to its commitment and in response to concerted calls by political activists and civil society organisations (CSOs)

in the first few months of attaining power, the NARC government initiated numerous legislative and institutional reforms and a range of activities aimed at redressing past injustices.

Reference 17 - 0.05% Coverage

The police and the military forces are at the centre of Kenya's history of gross violations of human rights. While other agencies of the state were responsible for historical injustices and gross violations of human rights during the mandate period, security agencies were both primarily responsible for many of the acts of commission documented in this Report, as well as the acts of omission (the failure to provide security) that allowed many of the violations committed by non-state actors to occur.

Across the country, the Commission heard horrendous accounts of atrocities committed against innocent citizens by the police and the military. The history of security operations conducted by these two institutions, either jointly or severally, is dominated by tales of brutal use of force, unlawful killings (sometimes on a large scale), rape and sexual violence, and burning and looting of property. In security operations, the police and the military often employed collective punishment: the indiscriminate rounding up of individuals in a specific area, then brutally punishing them, all with the expectation that this would yield the desired results of increased security. Thus, since independence, the police and the military in Kenya have been viewed and invariably described as rogue institutions; they are still feared and seen as perennial violators of human rights rather than protectors of the same.

Reference 18 - 0.01% Coverage

The Shifta War, waged between 1964 to 1967, represents a period in Kenya's history during which systematic and widespread violation of human rights (including mass killings) of Kenyan citizens occurred. Officially, the death toll stands at 2,000. Unofficial estimates place the death toll at 7,000. The Shifta War acts as a bridge from the violations committed by the colonial power prior to independence and the violations

Reference 19 - 0.01% Coverage

Witness testimonies before the Commission brought to the surface the long history of violation of human rights and related activities in Northern Kenya. From the colonial days, Northern Kenya had been administered differently from the rest of the country. Travel and movement restrictions were imposed and administrators were given extraordinary powers to arrest and detain members of what the state referred to as 'hostile tribes'.

Reference 20 - 0.02% Coverage

Hearings of the Commission were dominated by this problem. The most affected areas were Taita Taveta, Lamu, Malindi and Tana River districts. The Coast lags behind in terms of almost all indicators from infrastructure to health, education, housing, water and sanitation. The regions also exhibit gender marginalisation attributed to religious and cultural dynamics of the region. Rural areas are served by dilapidated road networks compared to Mombasa, Kilifi, Malindi and Kwale. Grand corruption and economic crimes The fight against corruption is central to the struggle for human rights. Corruption has always greased the wheels of exploitation and injustice which characterize our world. As

Reference 21 - 0.01% Coverage

In its Chapter on Grand Corruption and Economic Crimes, the Commission has demonstrated the linkages between these crimes and the enjoyment of human rights and the huge cost that Kenya is paying through corruption and economic crimes.

Reference 22 - 0.02% Coverage

Men and women experience violations of human rights and injustices differently. Building on the provisions of the TJR Act, the Commission adopted policies and took measures that ensured that the experiences of and violations suffered by women were appropriately and comprehensively covered both in its work and this Report. These policies and measures related to the Commission's statement-taking process, hearings, focus group discussions, and other activities undertaken by the Commission.

Reference 23 - 0.01% Coverage

Conflicts always result in the forced displacement of populations. The Commission's hearings revealed that the state's response to the plight and needs of internally displaced women was less than satisfactory. Generally, the state's response fell short of its obligations as stipulated in relevant human rights instruments.

Reference 24 - 0.03% Coverage

Kenyan women were also victims of state repression during the mandate period. As primary victims of state repression, scores of women, especially politicians, academics or human rights activists, were targets of state violence both during Kenyatta's and Moi's administrations. A number of female members of parliament who were vocal in their opposition to repressive rule would be subjected to trumped-up charges, detained, or even tortured. The vast majority of women were however secondary victims of state repression. Many women were widowed after their husbands were killed in security operations or died in police custody after undergoing torture. Some were subsequently thrown into destitution since husbands are the main breadwinners in many households in Kenya. Those whose husbands or sons were detained faced similar fate

Reference 25 - 0.02% Coverage

Children occupy a special place in any effort to understand the impact of gross human rights violations and historical injustices. Children are, on the one hand, some of the most vulnerable people in a community and as such are less able to defend themselves against those who would do them harm, and are more likely to suffer both short- and longterm effects from gross violations of human rights. At the same time, children are the future of the country. Their experiences of their community, of their peers, of officials, and of other people in authority have profound impacts on their future, including how they trust, or don't trust, those in authority.

Reference 26 - 0.02% Coverage

Thus, while the mandate of the Commission did not have a child-specific focus, the Commission made deliberate efforts to facilitate participation of children and young people in its proceedings and to ensure that their interests and views both as direct and indirect witnesses and victims of human rights violations were captured. The Commission designed child-friendly processes to promote the participation and

protection of children. Most notably, the Commission held a thematic hearing in Nairobi that included an opportunity for children to testify in their own words in an environment that was safe and supportive.

Reference 27 - 0.02% Coverage

Since independence, successive governments have employed silence, denial and selective amnesia whenever individuals and agencies have raised the need to address these fundamental issues. Painful memories of have been passed from one generation to another, and as a consequence, present generations continue to hold grudges for violations and historical injustices meted against their forefathers and mothers. Until now, the scale and impact of human rights violations and historical injustices have neither been fully acknowledged nor sufficiently addressed.

Reference 28 - 0.02% Coverage

The TJR Act required the Commission to make recommendations with regard to the policy that should be followed or measures that should be taken with regard to the granting of reparation to victims or the taking of other measures aimed at rehabilitating and restoring the human and civil dignity of victims. In this regard, the Commission has recommended the establishment of a reparation fund that shall be used to compensate victims of gross violation of human rights and historical injustices. The Reparation Framework recommended by the Commission sets out the categories of victims who would access the fund and the criteria for such access.

Reference 29 - 0.01% Coverage

HURIDOCS Human Rights Information and Documentation Systems

Reference 30 - 0.01% Coverage

Kenya National Commission on Human Rights

Reference 31 - 0.01% Coverage

OHCHR Office of the High Commission for Human Rights

Reference 32 - 0.01% Coverage

Desirous that our nation achieves its full potential in social, economic and political development;
Concerned that since independence there has occurred in Kenya gross violation of human rights, abuse of power and misuse of public office;

Reference 33 - 0.02% Coverage

To the citizens of a new free nation, independence meant the return to lands from which they had been forcibly evicted and of which they had been dispossessed in order to pave way for British settlers. It was supposed to be the beginning of political and economic emancipation; the start of respect for the rule of law, human rights and dignity and the laying down of the foundations and tenets of democracy. Many envisioned a united nation. The high expectations and hopes of Kenyans at independence were succinctly summarised in the national anthem:

Reference 34 - 0.01% Coverage

7. What followed this moment of renewal and optimism was a history of political repression, blatant injustices and widespread, systematic violation of human rights.

Reference 35 - 0.01% Coverage

Following the death of President Jomo Kenyatta, the then Vice-President, Daniel Toroitich arap Moi, took over the presidency as directed by the constitution. Upon his ascension to power, Moi ordered the release of political prisoners detained during the Kenyatta era. This action suggested the entry of a leader who had the political will to respect and protect human rights. However, his apparent goodwill did not last long.

Reference 36 - 0.02% Coverage

14. By 2002, when KANU was dislodged from power by the National Rainbow Coalition (NARC), Kenya was a ravaged state with a history burdened by ghastly accounts of gross violations of human rights and historical injustices. In effect, the KANU government had created an authoritarian, oppressive and corrupt state. It created a traumatised nation of thousands of individuals living with physical and psychological wounds in a country that had no time or space for their experiences and stories. It

Reference 37 - 0.02% Coverage

The 2002 general election, unlike preceding multi-party elections in 1992 and 1997, was not characterised by political violence. Significantly, President Moi did not contest the transfer of power to Mwai Kibaki. NARC came to power on a platform that promised to curb and ultimately eliminate the political transgressions and human rights violations that had been regularised during the 39 years of KANU's rule. NARC also pledged to address and rectify historical injustices. In his inaugural speech to the country on the day he was sworn in as the third president of the Republic of Kenya, Mwai Kibaki spelt out the vision of the new government - a vision that embodied the pursuit of transitional justice:

Reference 38 - 0.01% Coverage

- enactment of legislation creating the Kenya National Commission on Human Rights.

Reference 39 - 0.04% Coverage

20. After a period of collecting and collating the views of Kenyans from across the country, the Task Force concluded that a truth commission was necessary. It recommended that a commission to be referred to as the 'Truth, Justice and Reconciliation Commission', be established no later than June 2004. It summarised the views of Kenyans thus: The people of Kenya have spoken, and the Task Force is privileged to report that Kenyans want a truth, justice, and reconciliation commission established immediately. The overwhelming majority of Kenyans, over 90 per cent of those who submitted their views to the Task Force, want the government to establish an effective truth commission, a vehicle that will reveal the truth about past atrocities, name perpetrators, provide redress for victims, and promote national healing and reconciliation. Kenyans believe that a truth commission will renew the country's morality in politics, law, in the economy, and throughout the society. They want a state founded on the rule of law and respect for

the human rights of every individual who resides in Kenya. In other words, Kenyans want a human rights state.²

Reference 40 - 0.01% Coverage

Commission for Human Rights and Administrative Justice. It would comprise of three individuals – the People’s Protector (Ombudsman), a Human Rights Commissioner, and a Gender Commissioner – with the general mandate to, inter alia:⁷

- investigate and establish, as complete a picture as possible, of the nature, causes and extent of gross violations of human rights;

Reference 41 - 0.03% Coverage

Essentially, it had been envisaged that the Commission for Human Rights and Administrative Justice would have the mandate and discharge the functions of a truth commission. This recommendation was incorporated into the Draft Constitution of Kenya. The seventh schedule of the Bomas Draft addressed issues relating to the transitional period following the adoption of the Draft Constitution. Article 18 in particular dealt with the question of ‘past human rights abuses’ and provided as follows: Parliament shall, within six months after the effective date, enact a law to empower the Commission on Human Rights and Administrative Justice to – (a) investigate all forms of human rights abuses by any person or group of persons before the effective date;

Reference 42 - 0.01% Coverage

32. At the National Referendum held on 21 November 2005, 57 percent of Kenyans rejected the Wako Draft. While the outcome of the referendum was accepted, the referendum process had effectively exacerbated ethnic divisions in the country. Following the conclusion of the referendum, the Kenya National Commission on Human Rights (KNCHR) issued a report in which it concluded that:

Reference 43 - 0.01% Coverage

8 Kenya National Commission on Human Rights Behaving badly: Referendum report (2006) 5. 12 REPORT OF THE TRUTH, JUSTICE AND RECONCILIATION COMMISSION

Reference 44 - 0.02% Coverage

34. With the government having reneged on its general promise to pursue transitional justice, the Kenya National Commission on Human Rights (KNCHR) and civil society organisations continued to push for the formation of a truth commission. In particular, the KNCHR organised a series of events to honour and celebrate the life of prominent individuals who had been assassinated since Kenya’s independence. The first such event recalled the life of Tom Mboya and his assassination.⁹ expectation of this particular event was two-fold:

Reference 45 - 0.01% Coverage

- to enable the country to begin to understand the need to push for a truth commission to bring out the truth or as much of it as possible, regarding the assassination of Tom Mboya and others who had suffered

in defence of human rights and political freedoms, as part of the mechanisms of transitional justice in Kenya.

Reference 46 - 0.01% Coverage

9 Kenya National Commission on Human Rights An evening with Tom Mboya (2006). 10 Kituo cha Katiba Report of the convening on transitional justice in Kenya, Nairobi, 7 December 2007. 11 Kenya National Commission on Human Rights Still behaving badly: Second periodic report of the Election-Monitoring Project (2007).

Reference 47 - 0.02% Coverage

- The Commission would inquire into human rights violations, including those committed by the State, groups or individuals. Such inquiry was to include but not be limited to politically-motivated violence, assassinations, community displacements, settlements and evictions. The Commission was also to inquire into major economic crimes, in particular grand corruption, historical land injustices and the illegal and irregular acquisition of land, especially as related to conflict or violence. Other historical injustices were also to be investigated.

Reference 48 - 0.01% Coverage

- one person nominated by the Kenya National Commission on Human Rights (KNCHR);

Reference 49 - 0.02% Coverage

In April 2009, the Selection Panel placed an advertisement in the Kenya Gazette and in three daily newspapers inviting applications from persons who met the qualifications set forth in the Act for nomination as commissioners. The Act required that the Commissioners include individuals with knowledge and experience in human rights law, forensic audit, investigations, psycho-sociology, anthropology, social relations, conflict management, religion and gender issues.

Reference 50 - 0.01% Coverage

conflict of interest. The Act thus required that commissioners be persons who had 'not in any way been involved, implicated, linked or associated with human rights violations of any kind or in any matter which is to be investigated under this Act'.²⁷

Reference 51 - 0.01% Coverage

- Human Rights Violations Committee; • Reparations and Rehabilitation Committee; • Reconciliation Committee; and • Amnesty Committee.

Reference 52 - 0.02% Coverage

- Investigations Department: The Investigations Department's primary role was to collect, analyze and provide accurate information to enable the Commission to build a complete historical record and picture of gross human rights violations. In particular, the Department was responsible for: identifying and

interviewing victims and witnesses; collection and recovery of evidence from victims and witnesses; and mapping out areas identified as scenes of gross violations of human rights for the Commission's site visits.

Reference 53 - 0.02% Coverage

This Chapter presents the Truth, Justice and Reconciliation Commission's (the Commission) understanding of its overriding objectives and interpretation of its mandate, both material and temporal. The Commission adopted a purposive and liberal interpretation of its objectives and functions; an approach that accorded with established principles and rules of international human rights law and best practices in the field of transitional justice.

Reference 54 - 0.01% Coverage

and Promotion of Human Rights through Action to Combat Impunity;² Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law;³ and the Report of the Special Rapporteur on the Promotion and Truth, Justice, Reparation and Guarantees on Non-Recurrence.⁴

Reference 55 - 0.01% Coverage

1 S/2004/616, 23 August 2004. 2 UN Commission on Human Rights, Sixty-first session, Item 17 of the provisional agenda, E/CN.4/2005/102/Add.1, 8 Feb 2005.

3 Adopted by the UN General Assembly, 21 March 2006, A/RES/60/147. 4 UN Human Rights Council, Twenty-first session, Agenda item 3, A/HRC/21/46, 9 Aug 2012.

Reference 56 - 0.02% Coverage

The right to truth is now an established right in international human rights law. Indeed, there is a burgeoning jurisprudence and literature recognising and affirming the right of victims of gross violations of human rights to know and be informed of the truth. However, what constitutes the truth in a particular context and society is often subject to contestations and multiple conflicting narratives. Thus, the role of a truth commission in this regard is to 'set the record straight'. That it was envisaged that the Commission would play such a role is evident from its title.

Reference 57 - 0.02% Coverage

Although section 5(a) and (b) does not make reference to the term 'truth', it was understood that the provisions thereof conferred on the Commission the obligation to establish the truth relating to gross violations of human rights and historical injustices in Kenya. Section 5(a) provides that the Commission's mandate includes 'establishing an accurate, complete and historical record of violations and abuses of human rights and economic rights during the mandate period. Section 5(b), on the other hand, states that the mandate of the Commission includes 'establishing as complete a picture as possible of the causes, nature and extent of the gross violations of human rights and economic rights.

Reference 58 - 0.03% Coverage

By requiring the Commission to establish a complete historical record of violations and abuses committed within a 45-year period, section 5(a) imposed on the Commission an ambitious and almost insurmountable task. Section 5(b) took a more permissive language as it required the Commission to establish 'as complete a picture as possible'. In essence, section 5(b) implicitly recognised that establishing a complete picture of the causes, nature and extent of violations could not be practically achieved. On the whole, however, given the fact that the Commission was a temporary body with limited resources, the contents of this Report are not exhaustive in terms of establishing a complete record of gross violations of human rights or painting a complete picture of the causes, nature and extent of these violations.

Reference 59 - 0.02% Coverage

The challenge the Commission faced in establishing a complete record and picture of gross violations committed in Kenya from 1963 to 2008 is not unique. Many truth commissions have had to contend with the fact that they cannot practically establish complete records of human rights violations that have occurred within their respective societies. For instance, the Sierra Leone Truth and Reconciliation Commission observed as follows in relation to its mandate:

Reference 60 - 0.01% Coverage

in gross violations of human rights and injustices to individuals and communities did in fact take place. Therefore, the reality and occurrence of these events cannot and should not be denied any more, at least in official circles and by the state.

Reference 61 - 0.05% Coverage

The drafters of the TJR Act were sensitive to the criticisms aimed at previous truth commissions concerning their perceived lack of focus on justice and thus made sure to both include the word 'justice' in the title of the Commission as well as to empower the Commission to further justice by engaging with the more traditionally retributive criminal justice system. Most importantly, the Commission was empowered by the Act to 'identify any persons who should be prosecuted for being responsible or involved in human rights and economic rights violations and abuses'.⁹

22. One of the most important contributions the Commission hopes to make towards justice in Kenya is the establishment of an authoritative record of past abuses. Justice will be furthered in this Report through the identification of individuals and institutions found to be responsible for human rights violations and historical injustices. Even where there is no prospect of criminal justice the conduct of rights violators will be held up for close scrutiny. They will be held to public account and their roles forever recorded in history.

23. History will be guided by this Report in judging and assessing the conduct of perpetrators. In publicly identifying those it found to be responsible for human rights violations and historical injustices, the Commission invites Kenyans and the world to hold these individuals to account for their actions.

Reference 62 - 0.04% Coverage

In addition to embracing its mandate relating to justice in the traditional sense, the Commission also adopted restorative and social elements of justice in its work and in this Report. Retributive justice mechanisms, because of their focus on perpetrators and punishment, are often ill-equipped to cater to the needs of victims. While restorative justice does not preclude accountability and even punishment for perpetrators, it is equally focused on repairing the harm done to victims and the greater community.

Recognising and acknowledging the suffering and experiences of victims and searching for ways to move forward as a nation, are crucial to restorative justice. Social justice, on the other hand, is linked to equality and respect for human rights. Social justice generally refers to the idea of creating a society or institution that is based on the principles of equality and solidarity, that understands and values human rights, and that recognises the dignity of every human being [...] Social justice is based on the idea of a society which gives individuals and groups fair treatment and a just share of the benefits of society.¹⁰

Reference 63 - 0.01% Coverage

Some aspects of the Commission's mandate inevitably required the Commission to adopt restorative and social conceptions of justice. In particular, the TJR Act required the Commission to determine ways and means of redress for victims of gross violations of human rights.¹¹

Reference 64 - 0.01% Coverage

for the procedure for recommending reparation and rehabilitation of victims of gross violations of human rights. Moreover, in assessing and recommending ways of redressing violations of socio-economic rights and the legacy of economic marginalisation in respect to certain regions or communities, the Commission adopted a restorative and social conception of justice.

Reference 65 - 0.04% Coverage

each other. None of the values should be seen or pursued in isolation. This is an approach that has been recently advocated by the UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-recurrence. In his first report to the UN Human Rights Council, in which he made a case for a comprehensive approach to the constituent elements of his mandate he noted: The Special Rapporteur takes the four components of the mandate, truth, justice, reparations and guarantees of non-recurrence as a set of measures that are related to, and can reinforce, one another, when implemented to redress the legacies of massive human rights violations and abuses. Redressing the legacies of abuse means primarily giving force to those human rights norms that were systematically or grossly violated [...] While arguably, they all serve the ultimate end of pursuing justice, a less abstract functional analysis that distinguishes between the immediate, mediate and final ends of the measures would say that the four measures can be conceptualized as assisting in the pursuit of two mediate goals, i.e., providing recognition to victims and fostering trust, and two final goals, i.e. contributing to reconciliation and strengthening the rule of law.¹⁹

Reference 66 - 0.01% Coverage

¹⁹ Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, Human Rights Council, 9 Aug 2012, A/HRC/21/46.

²⁰ Question of the Impunity of Perpetrators of Human Rights Violations, UN Sub-Commission on the Protection and Promotion of Human Rights, June 1997.

Reference 67 - 0.01% Coverage

²¹ Report of the Truth and Reconciliation Commission for Sierra Leone, volume one (2004) 85. ²² Schedule N of the Indian Residential Schools Settlement Agreement, preamble. ²³ J Zalaquett 'Balancing

Ethical Imperatives and Political constraints: The Dilemma of New Democracies Confronting Past Human Rights Violations'

Reference 68 - 0.01% Coverage

Thus, when the Truth, Justice and Reconciliation Bill, 2008 (TJR Bill) was introduced in Parliament for debate, the Minister for Justice stated in her 'Memorandum of Objects and Reasons' that: [...] The Bill is borne of the realisation that lasting peace and co-existence cannot prevail in Kenya unless historical injustices and violation and abuse of human rights have been addressed.

Reference 69 - 0.03% Coverage

The Bill emanates from the deliberations of the National Dialogue and Reconciliation Committee which was formed after a political crisis ensued following a dispute on the outcome of the Presidential Election held on 27th December, 2007. The political crisis brought to the surface deep-seated and long-standing divisions within the Kenyan society and to heal those divisions, a raft of constitutional, legal and political measures to defuse the crisis were proposed, among them being the formation of a Commission to deal with historical injustices and violation of human rights. The establishment of the Commission was conceived with a view to addressing historical problems and injustices which, if left unaddressed, threatened the very existence of Kenya as a modern society.

Reference 70 - 0.03% Coverage

54. Although the TJR Act does not create a hierarchy in relation to the functions of the Commission, it is noteworthy that the first two ways in which it envisaged that the Commission would execute its objectives is through the compiling of a historical record. In this regard, section 5(a) mandated the Commission to establish an accurate, complete and historical record of gross violations of human rights committed in Kenya by various state actors between 12 December 1963 and 28 February 2008. Section 5(b) mandated the Commission to establish as complete a picture as possible of the causes, nature and extent of violations of human rights. In this regard, the catalogue of specific violations that the Commission investigated is provided and discussed in detail further below.

Reference 71 - 0.01% Coverage

56. According to the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims, 'victims should be treated with humanity and respect for their dignity and human rights and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families'.²⁵

Reference 72 - 0.03% Coverage

In respect to determining perpetrators of violations, the Commission has published in this report names of individuals who were alleged to have committed gross violations of human rights during its mandate period. The Commission received allegations against 54,000 individuals. However, the list of alleged perpetrators contained in this report is only limited to those who were afforded an opportunity to respond to allegations levelled against them. Due to limited resources and time constraints, the Commission could not notify all alleged perpetrators of the nature of allegations raised against them. As such, the Commission had to prioritise its work in relation to sending out notifications to alleged

perpetrators. The criteria used included looking at the gravity of the violations and the frequency of an individual's appearance in the Commission's database as a perpetrator.

Reference 73 - 0.02% Coverage

served in the independence government are still alive. Thirdly, it stands to reason that Kenyans ought to rightly audit their own state, not the colonial British state. Fourth, the human rights violations and gross economic crimes that the majority of Kenyans want investigated were committed over the last forty years. Lastly, the investigation span of the last forty years is financially feasible and defensible, practical, and could be carried out within a two-year period. It is for these reasons that the Task Force recommends that a truth commission cover the period from December 12, 1963 to December 31, 2002.³⁵

Reference 74 - 0.02% Coverage

Clause 5 gives the objectives of the Commission as to promote peace, justice and national unity, healing and reconciliation among the people of Kenya. The Commission will, therefore, be establishing an accurate, complete and historical record of violation and abuses of human rights and economic rights inflicted on Kenyans by the state, public institutions and holders of public office, both serving and retired, between 12th December, 1963 and 28th February, 2008.

Reference 75 - 0.02% Coverage

69. After clarifications, those who harboured fears such as is quoted above came to understand that the envisaged commission could inquire into the colonial period. No changes were, therefore, made to the clauses in the TJR Bill relating to the temporal mandate of the Commission. Thus, in the TJR Act, the first part of the relevant sections mandates the Commission to investigate violations of human rights that occurred in Kenya between 12 December 1963 and 28 February 2008.³⁸ The second part mandates it to look into 'antecedents, circumstances, factors and context'.³⁹

Reference 76 - 0.02% Coverage

arguing that the TJR Act was defective and unconstitutional to the extent that it excluded the periods before 12 December 1963 and after 28 February 2008 from the Commission's temporal mandate. The court dismissed the contention on a technical ground, though in doing so it incorrectly accepted the underlying assertion that the Commission was precluded from looking at events before or after the prescribed temporal mandate: We note that the ex parte applicants are concerned with human rights violations which occurred prior to 12th

Reference 77 - 0.02% Coverage

In addition to raising concerns about the perceived legal inability for the Commission to inquire into events that occurred during the colonial period, some people went further to assert that the Commission's mandate should have been extrapolated to cover the period after 28 February 2008. For instance, in its letter already alluded to above, the Release Political Prisoners Trust argued that: The [TJR] Act also ignores the period after February 2008, when other human rights violations took place, especially the killing of human rights defenders GPO and Oscar

Reference 78 - 0.05% Coverage

This was an erroneous assumption. But first, it must be emphasised that being a temporary body, a truth commission must have a time-bound mandate. Its focus should be on past violations, as has been the case with all truth commissions across the world. The role of investigating 'new' and 'current' violations traditionally rests with permanent bodies such as the police department or national human rights institutions. Occasionally, commissions of inquiry are constituted to investigate particular current events or violations.

75. With these caveats in mind, the Commission nevertheless proceeded with its work with the understanding that it could, in certain circumstances, inquire into events that occurred after 28 February 2008. Firstly, borrowing *mutatis mutandis* from the 'continuing violations' doctrine developed by human rights treaty bodies, the Commission could extrapolate its mandate beyond 28 February 2008 if a violation under its inquiry was a continuing violation. That is, the violation commenced during the mandate period but continued after that period. For example, some of the people displaced during the 2007-2008 Post-Election Violence remain in camps and have not been compensated for their losses. As such, the Commission required all individuals filling out a Statement Form to indicate whether the violation they were recording was a continuing violation.⁴¹

Reference 79 - 0.02% Coverage

Unlike most previous truth commissions, whose mandate focused on human rights violations during a particular event (such as an armed conflict), the Commission's mandate covered a 45-year period of relative peace, albeit with occasional eruptions of violence that were often limited to specific geographical areas or to political transitions. In other words, the country as a whole has never experienced an intense and long period of violence. However, the entire mandate period was characterized by various forms of state violence and episodes of systematic and widespread violations of human rights. The mandate period was also characterised by state plunder, corruption and impunity.

Reference 80 - 0.02% Coverage

But Kenyans are clear that these functions cannot be successfully performed unless established categories of human rights violations and economic crimes are fully investigated and addressed. While it is true that many horrible and unimaginable violations have been perpetrated by the state over the last forty years, the Task Force believes that a truth commission cannot investigate every human rights violation. The Task Force therefore recommends that a truth commission address certain categories of violations. The violations that ought to form the terms of reference of a truth commission must be those that indicate a systemic pattern or state policies, actions that

Reference 81 - 0.02% Coverage

were carried out as policies of the state to abrogate the rights of Kenyans. Thus a truth commission must have the discretion to decide which violations qualify for scrutiny. In any case, it is practically impossible for a truth commission to address more than several thousand cases. That is why the Task Force has identified individual cases and groups of violations that it believes ought to be the subject of inquiry. The Task Force has made this choice consistent with the views of Kenyans and with due regard to the purposes of an effective, timely, and the least burdensome truth commission. The Task Force recommends that a truth commission investigates six categories of human rights violations and economic crimes.

Reference 82 - 0.03% Coverage

82. During the KNDR negotiations, this list was expanded to include numerous other issues and particularly, a category of issues falling under the rubric of historical injustices. In this regard, the TJRC Agreement states: The Commission will inquire into human rights violations, including those committed by the state, groups, or individuals. This includes but is not limited to politically motivated violence, assassinations, community displacements, settlements and evictions. The Commission will also inquire into major economic crimes, in particular grand corruption, historical land injustices, and the illegal and irregular acquisition of land, especially as these relate to conflict or violence. Other historical injustices shall be investigated.

Reference 83 - 0.02% Coverage

The TJR Act was enacted with the recommendations of the Makau Mutua Task Force and the provisions of the TJRC Agreement in mind. However, sections 5 and 6 of the Act, under which the mandate of the Commission is spelt out, is at best ambiguous and confusing. For instance, it makes several incongruent references to the nature of rights to be investigated: 'violations and abuses of human rights and economic rights'; 'gross violations of human rights and economic rights'; and 'gross human rights violations and violations of international human rights law and abuses'. In essence, it is not clear whether the drafters intended that the Commission focus on

Reference 84 - 0.02% Coverage

'ordinary' violations of human rights or on gross violations of human rights. Similarly, multiple sections of the Act offer different prescriptions on the same topics. For instance, on the subject of sexual violations, section 5(c) refers to 'sexual violations' but section 6(h) refers to 'crime of a sexual nature against female victims'. Moreover, while some key terms within the Commission's mandate are defined, some are not (such as 'economic crime'). In addition, some definitions offered in the Act create uncertainty and ambiguity concerning the intention of the drafters.

Reference 85 - 0.05% Coverage

Faced with these uncertainties and mindful of the high expectations many placed on the Commission's work, the Commission adopted a liberal approach to interpreting its mandate. After a careful analysis of the provisions of the TJR Act, it categorised its subject matter mandate into three broad areas: gross violations of human rights; historical injustices; and other mandate areas.

85. Before these mandate areas are discussed in detail, it is important to dispense with two preliminary issues. Firstly, the TJR Act appears to create a distinction between 'human rights violations' (presumably under national law) and 'violations of international human rights law'. The Commission considered this distinction to be inconsequential. It is assumed and rightly so, that in referring to both 'human rights violations' and 'violations of international human rights law', the lawmaker wanted to be exhaustive and not to miss anything. However, the lawmaker was clearly mistaken as to the possible difference in violations of human rights under national and international law. What differs – and this was irrelevant to the work of the Commission – is the forum at which victims may seek recourse. Sometimes the remedies available and the protections afforded may be more extensive under international law than at national law.

Reference 86 - 0.01% Coverage

Given that Kenya was already a party to the main international human rights instruments for a good number of years during the mandate period,⁴⁵

Reference 87 - 0.01% Coverage

Secondly, the Act appears to make a distinction between civil and political rights, on the one hand and socio-economic rights, on the other. This is apparent from section 5(a) and (b) which refer to 'violations and abuses of human rights and economic rights' and 'gross violations of human rights and economic rights'

Reference 88 - 0.01% Coverage

respectively. The use of the disjunctive 'and' may appear to suggest that there is a difference between 'human rights', on the one hand, and 'economic rights', on the other. Again, this distinction is inconsequential. It is now established in human rights law and practice that all human rights are indivisible, interdependent and interrelated.⁴⁶

Reference 89 - 0.04% Coverage

88. Apart from the conceptual linkages between civil and political rights and socioeconomic rights, historical patterns of human rights violations in Kenya shows that violations of these two categories of rights work hand in hand. This was a point that the Makau Mutua Task Force considered when it recommended that a Kenyan truth commission should inquire into violations of both civil and political rights and socio-economic rights. According to the Task Force: It is a well-established fact in human rights law that all human rights – including economic, social and cultural rights – are indivisible, inter-dependent, and inter-related. Thus human rights law does not only refer to civil and political rights. The Republic of Kenya has an internationally binding obligation to protect all human rights, that is, civil and political rights, and economic, social and cultural rights, because it is a signatory to both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. That is why a truth commission should investigate the violations of civil and political rights as well as those of economic, social and cultural rights.⁴⁸

Reference 90 - 0.02% Coverage

Gross violations of human rights

91. Although, as indicated above, it is not evidently clear whether the intention of Parliament was for the Commission to focus on 'ordinary violations' or 'gross violations of human rights', the Commission made a decision to focus on the latter. After a careful scrutiny of the TJR Act, the Commission concluded that there was a strong textual indication all over the Act to suggest that Parliament intended gross violations of human rights should be the focus of the Commission's inquiry. In

Reference 91 - 0.01% Coverage

section 5 and 6, the Act refers to 'gross violations of human rights' or 'gross human rights violations' seven times.

Reference 92 - 0.01% Coverage

There are at least two additional reasons why the Commission believes its focus on gross violations of human rights is accurate and valid. First, comparative experience shows that gross violations of human rights have been the focus of inquiries by truth commissions elsewhere.⁴⁹

Reference 93 - 0.03% Coverage

between Kenya's and other countries, there was no need for the Commission to reinvent the wheel on this specific issue. The second reason was a matter of policy and practical considerations. The Commission could not, even if it chose to do so, inquire into all human rights violations, however petty, within a 45-year period. It was not practical, in view of time and resource constraints.

93. Having made the decision that it would focus on gross violations of human rights, the Commission had to then define what this entailed. Of course, the starting point was the TJR Act which defines 'gross human rights violations' to include the following:

(a) violations of fundamental human rights, including but not limited to acts of torture, killing, abduction and severe ill-treatment of any person;

Reference 94 - 0.01% Coverage

101. Finally, the Commission considered socio-economic violations within its mandate to investigate economic crimes and grand corruption. As the Makau Mutua Task Force report noted, 'economic crimes lead to the violations of the entire gamut of human rights and in particular of economic, social and cultural rights'.⁵⁰

Reference 95 - 0.02% Coverage

104. However, 'historical injustices' is not a term of art. It entered Kenyan lexicon in the context of activism and agitation for constitutional reform and establishment of transitional justice mechanisms aimed at addressing past human rights violations. In public discourse, the term refers to at least two things: Firstly, it refers to exclusion and marginalisation (in terms of economic development) of certain groups or regions and a range of violations supportive of this phenomenon.

Reference 96 - 0.01% Coverage

108. In addition to gross violations of human rights and historical injustices, the Commission was mandated to investigate and/or carry out the following three functions:

Reference 97 - 0.03% Coverage

109. As can be gleaned from the foregoing discussion, the Commission's mandate was both materially vast and complex. Truth commissions are ordinarily mandated to focus only on gross violations of human rights. In addition to being mandated to investigate gross violations of human rights, the Commission was also mandated to investigate historical injustices and other issues that are rarely the focus of a truth commission. The enormity of the task handed to the Commission is well illustrated by the testimony of a witness who, speaking of only a single event, the Wagalla Massacre, observed that: If all the water is turned into ink with which to write, all the trees are turned into pens with which to write, and all the land is turned into paper on which to write, the history of Wagalla cannot be covered.⁵³

Reference 98 - 0.02% Coverage

113. As such, while the Commission primarily focused on violations perpetrated by the state and its agents, in certain respects it considered the actions of non-state actors, especially militia groups such as Mungiki, Chinkororo and the Sabaot Land Defence Force (SLDF). The Commission's inclusion of non-state actors in its definition of perpetrators was fortified by the fact that this inclusion was necessary for the establishment of an accurate, complete and historical record of historical injustices and gross violations of human rights.

Reference 99 - 0.04% Coverage

114. One of the most controversial provisions in the TJR Act concerns the Commission's powers with respect to amnesty. Amnesties have been a much used, if controversial, mechanism in most transitions. While historically amnesties have been used and upheld even when they have applied to international crimes and other gross violations of human rights, there is now an established principle that amnesties for international crimes are prohibited under international law.

115. The TJR Bill included provisions granting the Commission power to recommend amnesty for a broad range of violations. Those powers were changed, in part, because of the successful lobbying of both domestic and international human rights organisations, who argued that international law prohibits the granting of amnesty for international crimes.

116. Thus, the first version of the TJR Act significantly restricted the range of violations for which amnesty could be granted. In particular, it provided that amnesty could not be granted for 'gross violation[s] of human rights or an act, omission or offence

Reference 100 - 0.01% Coverage

Commission concedes that the language as originally drafted was somewhat confusing with respect to its powers to recommend amnesty for genocide and war crimes, the clear provision prohibiting it from recommending amnesty for gross violations of human rights would clearly have prevented the Commission from recommending amnesty for most acts that would qualify as either genocide or a war crime.⁵⁶

Reference 101 - 0.01% Coverage

120. While the amendments made it clear that genocide, crimes against humanity and most likely other international law crimes could not be the subject of an amnesty recommendation, the Commission was still left to determine the acts, if any, for which it had the power to recommend amnesty. The Act made it clear that the Commission could not recommend amnesty for gross violations of human rights.

Reference 102 - 0.03% Coverage

⁵⁶ It is possible to argue that some minor acts that do not include violence against persons but might still qualify as genocide or a war crime would not constitute a gross violation of human rights of the nature provided in the Act (which lists violations of bodily integrity rights such as extrajudicial execution, enforced disappearance, sexual assault, rape, or torture). Thus some might argue that cruel inhuman or degrading treatment that does not rise to the level of torture but is part of an armed conflict or committed as part of a broader campaign of genocide might not fit within the prohibited acts for which the Commission could not recommend amnesty. Given the 2009 amendments to the Act, the Commission

did not have to address whether such acts would or would not qualify as a gross violation of human rights.

Reference 103 - 0.01% Coverage

the Act defined gross human rights violations more broadly than this to include 'violations of fundamental human rights'.⁵⁷

Reference 104 - 0.05% Coverage

123. After internal deliberation and consultations with stakeholders, the Commission decided to forego exercising the powers granted to it to recommend amnesty. There are several reasons for this. First, given the broad definition of gross violations of human rights in the Act, the type of acts for which the Commission could recommend amnesty is very limited. The Commission generally adopted an expansive view of what qualified as a gross violation of human rights in order to provide a forum to as many witnesses as possible.

124. Second, given the limited acts for which amnesty could be recommended and the fact that it could only recommend and not grant amnesty, the Commission did not anticipate that much additional truth would come out of the amnesty process. The amnesty administered by the South African Truth and Reconciliation Commission (which was clearly the primary model for the amnesty provisions provided in the Act), was able to grant amnesty itself and was not clearly prohibited from considering amnesty for gross violations of human rights and even international crimes. The South African Commission did grant amnesty for, among other things, acts of torture, enforced disappearances, extra-judicial killings and other acts that are clearly outside of this Commission's power to recommend amnesty. While some have criticised the South African amnesty for foregoing justice for such crimes, others argue that new information was revealed about some of the worst violations committed during the apartheid years.

Reference 105 - 0.01% Coverage

57 TJRC Act, sec 2. While the definitions section refers to 'gross human rights violations' and the amnesty section to 'gross violation of human rights' we do not think that the drafters intended to be referring to two different concepts, but instead use the two phrases interchangeably to refer to the same violations.

Reference 106 - 0.01% Coverage

127. The Indemnity Act thus purports to institutionalise impunity for human rights violations committed by those acting on behalf of the government during a prescribed time and in a prescribed area. In other words, it attempts to create a separate legal regime with respect to accountability for the Shifta War.

Reference 107 - 0.01% Coverage

131. Speaking of the Indemnity Act before the Commission, a witness lamented: What a gross violation of human rights and absolute abuse of democracy that has been legitimized under the law! It was this period between 25th December 1963 to 1st December 1967 that gross human rights violations and atrocities were meted out on the residents of Northern Kenya. It is something so strange that section 3(b) says 'if it is done

Reference 108 - 0.01% Coverage

132. Another witness expressed similar sentiments: I do not want to go into the details of the Act, but it puzzles me ... I am yet to understand whether human rights can be grossly and systematically violated and abused in good faith and whether such violations and abuses further any known public interest.⁶¹

Reference 109 - 0.04% Coverage

138. Truth Commissions have grappled with how best to refer to individuals who were affected by or are responsible for gross violations of human rights. The Commission, like other truth commissions around the world, had a strong victim focus. The TJR Act directed the Commission to elicit the views and perspectives of victims, restore their dignity and determine ways and means of providing them with redress. The term 'victim' is also defined in the Act essentially as any person or group who has suffered any harm, loss or damage as a result of a human rights violation.⁶⁴

139. However, while the TJR Act refers to perpetrators, it does not define the term. It is clear, however, that the term perpetrator refers to an individual who bears some responsibility for a gross violation of human rights or other violation within the mandate of the Commission. Both terms (victim and perpetrator) thus presuppose a determination that, in the case of victims, an individual has suffered harm, loss or damage as a result of a violation, or in the case of perpetrators, are responsible for a violation. In other words, both require that a determination be made with respect to the existence of a violation and either harm or responsibility arising from that violation.

Reference 110 - 0.02% Coverage

The Commission adopted procedures and policies which conformed to internationally accepted standards for truth commissions and truth seeking initiatives. The Commission's reference materials in this regard included the General Principles and Parameters for the Truth, Justice and Reconciliation (TJRC Agreement), Truth Justice and Reconciliation Act (TJR Act) and the United Nations Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity.

Reference 111 - 0.02% Coverage

To ensure inclusiveness in its civic education and outreach activities, the Commission organised special workshops and meetings that created space and a conducive atmosphere for expression and discussion of the various experiences of specific vulnerable groups. Such forums were organised for women, youth, children, persons with disabilities, internally displaced persons, slum dwellers, squatters, evictees and survivors of particular episodes of human rights violations.

Reference 112 - 0.01% Coverage

The process sought statements from victims and witnesses of various forms of human rights violations. It provided victims, their families and witnesses the opportunity to tell their stories. The process gave voice to a multitude of stories and perspectives about violations that had occurred in Kenya's history.

Reference 113 - 0.01% Coverage

The Commission was fully aware that the process of sharing experiences of gross human rights violations could be traumatic for victims. As such, Statement Takers were trained on how to assist victims deal with trauma. Moreover, aware of the importance of the need for inclusion and participation in a truth seeking

process, the Commission ensured that the statement taking process was inclusive, accessible and safe. In particular:

Reference 114 - 0.03% Coverage

much information as possible about gross violations of human rights. The Form was designed to capture this information from both victims and perpetrators, but no single perpetrator volunteered information through this avenue. This was so despite the fact that individuals who were adversely mentioned in Statement Forms or during the hearings were so notified and requested by the Commission to file a statement.

18. Human Rights Information and Documentation Systems (HURIDOCs), an internationally recognised organisation in human rights data gathering and analysis, reviewed the Statement Form and found it met internationally accepted standards for tools designed to gather information about human rights violations. HURIDOCs described the Commission's statement taking form as 'one of the most sophisticated we have seen from a truth commission'.

Reference 115 - 0.02% Coverage

The Commission recruited 304 Statement Takers - 113 male and 191 female. They were trained between 23 August 2010 and 9 September 2010 to prepare them for their task. The Commission developed a curriculum with four major areas of focus: transitional justice, human rights, and the mandate of the Commission; gender perspectives in statement taking; trauma management and the statement taking form and process. Training workshops were held in each of the eight provincial headquarters and were conducted by staff of the Commission with the assistance of consultants.

Reference 116 - 0.01% Coverage

In order to organise, manage and statistically analyse the information received through statements and memoranda, the Commission created an electronic database that facilitated the input, storage, retrieval and analysis of data. A team brought together by HURIDOCs provided technical support in the creation of the database while the United Nations Office of the High Commissioner for Human Rights (OHCHR) offered financial support.

Reference 117 - 0.02% Coverage

of gross violations of human rights in the country. The role of the Department also extended to the collection and analysis of relevant documentary and other forms of evidence. The strategy for conducting such investigations was robust yet flexible enough to adapt to the changing operational environment. For purposes of selecting window cases to be heard during the individual hearings (see below), the Investigation Department interviewed a total of 919 people across the country as shown in the table below.

Reference 118 - 0.02% Coverage

- Pre-hearing investigations: Pre-hearing investigations were conducted ahead of the hearings in each of the eight provinces of the country. A senior investigator appointed as the Investigations Manager for each region was responsible for developing a Regional Investigation Plan. The Plan consisted of an overview of the major human rights violations reported in the region. It also included a list of potential witnesses and

AMPs distilled from Statement Forms and from other sources of information available to the Commission. A Regional Report was then produced identifying crucial cases to be investigated in a specific region and a timeline for conducting the investigations.

Reference 119 - 0.01% Coverage

Section 5(a) and (b) of the TJR Act required the Commission to establish an accurate, complete and historical record of gross human rights violations and to gather as much information as possible about the causes, nature and extent of these violations. Together with research, investigations and other sources of information, hearings enabled the Commission to fulfil a major part of this duty.

Reference 120 - 0.01% Coverage

Individual hearings focused on the experience of individuals in relation to gross violation of human rights. Testimony was heard from individuals whose rights had been violated, as well as from those who either had knowledge of or allegedly participated in acts that resulted in the violations. The individual hearings were designed to achieve three goals, namely:

Reference 121 - 0.01% Coverage

Individual hearings were designed on the basis of a few cases ('window cases') that were selected for purposes of painting the broader patterns and trends of gross violations of human rights in a particular region or area.

Reference 122 - 0.01% Coverage

To ensure that a representative sample of cases was selected in each region, the selection process considered the following factors: • regional trends and patterns of gross violation of human rights; • issues and injustices specific to the region; • issues and injustices specific to vulnerable and minority groups resident in the region;

Reference 123 - 0.03% Coverage

Three departments – Legal, Investigations and Research – were involved in the selection of cases. The Research Department prepared, for each region, a general background report describing the regional trends and patterns of human rights violations. The Investigations Department searched through statements and memoranda in the regional reports for potential window cases. This was followed by the interviewing of potential witnesses and narrowing down their number and findings submitted to the legal department. The Legal Department assessed the cases further and depending on the suitability of a case prepared a final list of window cases.

71. Regional Coordinators and Statement Takers were also invaluable actors in the process because of their knowledge of their respective regions and the issues most important to the local community. The Commission also profiled events and violations thought to have particular relevance to the national narrative about gross violations of human rights.

Reference 124 - 0.04% Coverage

The Task Force was deeply concerned by the low numbers of women who turned up at its public hearings to make submissions. Although the Task Force encouraged the few women present to speak up, this problem will have to be addressed once the truth commission is set up so that the issues that are particular to women are adequately dealt with. Kenya, like most countries, has deeply embedded prejudices, policies, and traditions that have historically marginalised women and made them invisible in the public square. Discrimination against women, violence, rape, and patriarchy have consigned women to the margins of society. Human rights violations and the economic crimes committed by the state have a special gendered effect on women. That is why violations against women have disproportionately multiplied adverse effects and are rarely addressed. A truth commission must pay particular attention to the participation of women and the abuses perpetrated against them. Otherwise, a truth commission will have little or no beneficial value in addressing the plight of women.

Reference 125 - 0.02% Coverage

104. In mitigation against the inability of victims to witness the testimonies of AMPs, the Commission, in partnership with Kenya National Commission on Human Rights (KNCHR) and German Technical Cooperation (GIZ), organised thirteen public feedback meetings in Wajir and Garissa counties in October 2011. The initial plan also included sessions in Mandera County. However, due to security reasons those sessions were cancelled. Subsequent to its hearings in Mandera, which borders Somalia, activities by the Al Shabaab militia group heightened, making the Commission's travel to Mandera impossible for security reasons.

Reference 126 - 0.02% Coverage

122. The Commission undertook a special data collection exercise on regional perceptions about the violations of socio-economic rights and economic marginalisation. This special exercise was needed after preliminary analysis of statements and memoranda showed that reporting on the violations of socio-economic rights was very low. Despite the fact that the Statement Form had a dedicated section on socio-economic rights, individuals who recorded statements tended to focus on human rights violations relating to bodily integrity and less on violations of socio-economic rights.

Reference 127 - 0.01% Coverage

These three allegations were of particular concern to the other Commissioners. The Act required that a Commissioner should not have been 'involved, implicated, linked or associated with human rights violations of any kind or in any matter which is to be investigated under this Act'.¹

Reference 128 - 0.01% Coverage

a) swearing in an affidavit submitted to the Selection Panel that he was not 'in any way ... involved, implicated, linked or associated with human rights

Reference 129 - 0.04% Coverage

The terms of reference for the Tribunal established by the Chief Justice were fundamentally different from and far broader than the issues raised by the Commission in its petition. Rather than limiting the jurisdiction of the Tribunal to acts committed by Ambassador Kiplagat in connection with his appointment and after his appointment (the subject of the Commission's petition), the Chief Justice interpreted

'misbehaviour and misconduct' under Section 17(1)(a) of the Act more broadly. The mandate of the Tribunal as set up by the Chief Justice was as follows: To investigate the conduct of the Chairman of the Truth, Justice and Reconciliation Commission, Ambassador Bethwell [sic] Kiplagat including, but not limited to, the allegations that the said Chairman's past conduct erodes and compromises his legitimacy and credibility to chair the Commission; his past is riddled with unethical practices and absence of integrity; he has been involved in, linked to or associated with incidents considered to be abuse of human rights; is likely to be a witness in the same matters that the Commission is mandated to investigate.²

Reference 130 - 0.01% Coverage

undermines individuals' and institutions' access to justice as guaranteed under the Constitution of Kenya and relevant human rights treaties to which Kenya is a party.

Reference 131 - 0.01% Coverage

later as a Commissioner. This was a great loss to the Commission, as Murungi has extensive experience in transitional justice, human rights law, gender and historical injustices in Kenya. As Vice-Chairperson she provided crucial leadership to the Commission as it grappled with the controversies surrounding the Chairperson. Unfortunately, and contrary to the express provisions of the TJR Act, Murungi was never replaced.

Reference 132 - 0.02% Coverage

109. Not surprisingly in January 2012, the KNDR Monitoring Project warned that: The Truth, Justice and Reconciliation Commission (TJRC) and the National Cohesion and Integration Commission (NCIC) have continued their efforts to inquire into human rights violations and prevent future violence, respectively. However, without political support for the work of these commissions, their impact on ethnic relations and deterrence capacity for future dissonance remains uncertain.

Reference 133 - 0.02% Coverage

113. Not surprisingly, despite the numerous institutional and legislative reforms (including the enactment of a new constitution and the reform of the judiciary) which followed the signing of the National Accord, the government continued to exhibit and resort to past practices and tendencies. In a sense, systematic violations of human rights and disregard for the rule of law continued way into an era which was supposed to be marked by a clean break with the past. It mattered little that by signing the National Accord and engaging in the KNDR process, the country's

Reference 134 - 0.01% Coverage

of Africa Peer Review Mechanism (APRM) - a body which evaluates governance with strong emphasis on democratic value and human rights where he was lead panelist for Nigeria, Egypt, Mozambique to mention a few.

Reference 135 - 0.02% Coverage

A committed and accomplished professional, Commissioner Shava was educated in law and democracy in UK and has over 17 years experience working in law, management and peacebuilding. An advocate of the

High Court of Kenya, she has also practiced conveyancing and commercial law with a leading Nairobi law firm and excels in modern corporate and human resources management. With her experience in the economic sectors as well as the UN and national & international NGOs specializing in human rights, governance and international refugee law, she brings a very special set of skills to her task as Commissioner.

Reference 136 - 0.02% Coverage

Professor of Law in Seattle since 1997 with an honorary professorship at the University of the Witwatersrand, Commissioner Slye teaches, writes and consults on public international law and international human rights law. International criminal law is his special area of expertise, including legal responses to genocide and other mass atrocities especially tribunals and truth and reconciliation commissions.

Author of dozens of articles and book chapters on international law, human rights, environmental and poverty law and co-author of two books on international criminal law including the

Reference 137 - 0.02% Coverage

and refugees from the E. Horn and Central Africa. From 2002 she managed the Refugee Status Determination (RSD) exercise for Eritrean refugees in Gedaref, North Eastern Sudan. Working with various human rights NGOs has honed her skills – she has facilitated civic education workshops, developed concept papers and been an observer in the 1997 Kenya General Elections. The Institute for Education in Democracy, FIDA-Kenya, a women's NGO with UN observer status, and the Education Centre for Women in Democracy are among the NGOs she has consulted

Reference 138 - 0.01% Coverage

democracy and constitutional change. He has consulted for the World Bank, USAID, ACCORD and EAC and continues to consult in the area of land reform, human rights, gender and legal practice.

Reference 139 - 0.01% Coverage

Human Rights Officer Assistant, Research

Reference 140 - 0.02% Coverage

GROSS VIOLATIONS OF HUMAN RIGHTS

The aim of this STATEMENT FORM is to gather as much information as possible about the gross violations of human rights (GVHR) suffered by individuals in various contexts in Kenya between 12 December 1963 and 28 February 2008. In terms of section 6 of the Truth, Justice and Reconciliation Commission Act (2008), gross human rights violations are:

1. Violations of fundamental human rights, including acts of torture, extra judicial killings, abduction and severe ill-treatment (cruel treatment) of any person; imprisonment or other severe deprivation of physical liberty (prolonged imprisonment);

Reference 141 - 0.01% Coverage

If you have experienced or have knowledge of Gross Violations of Human Rights committed between 12 December 1963 and 28 February 2008, please complete this statement. Thank you for sharing your painful experience with the TJRC. Your contribution will help our country come to terms with the past.

Reference 142 - 0.01% Coverage

- Establish a complete historical record of gross human rights violations and past injustices, including causes, nature and extent

Reference 143 - 0.01% Coverage

- Experience shows that some people, especially women, testify about violations of human rights that happened to family members or friends, but they are less willing to speak of their own suffering. Please don't forget to tell us what happened to you yourself if you were the victim of a gross human rights abuse.

Reference 144 - 0.01% Coverage

In this section, provide all the relevant information needed by the TJRC concerning the specific gross human rights violations. The Commission may use information to make findings, so provide as much verifiable detail as possible when responding to questions

Reference 145 - 0.01% Coverage

The table below provides a list and brief description of the different types of gross human rights violations as defined by the Act. You are requested to: • indicate which categories are relevant to your experience by marking a cross (X) in the appropriate box. If you have experienced more than one type or category of violation please indicate this by putting a cross (X) in the appropriate boxes.

Reference 146 - 0.04% Coverage

The TJRC is a Statutory Commission established by the Truth Justice and Reconciliation Act, Act No. 6 of 2008 (The TJRC Act). The TJRC Act was enacted after considering the fact that there have been gross violations of human rights, abuse of power and misuse of public office, and that there was need to give the people of Kenya a fresh start where justice is accorded to the victims of injustice and past transgressions. The framers of the TJRC Act were conscious of the fact that some of the transgressions against the Kenyan people could not be properly addressed by our judicial institutions due to procedural and legal hindrances. The Commissioners of the TJRC were duly appointed in accordance with the relevant provisions of the TJRC Act and no issues arose as to the suitability of any of the Commissioners at the time. Thereafter, an issue arose as to the suitability and/or credibility of the Chairperson of the TJRC continuing to serve as such. The dispute ended up in Court through Misc. App No. 470 of 2009 Republic vs. Truth, Justice and Reconciliation Commission and another Ex-parte Njeru Kathangu and 9 Others. In this suit the ex-parte Applicants alleged that:

Reference 147 - 0.03% Coverage

"For me, the applicant is faced with a serious moral issue. His appointment was on the basis that his conduct, character and integrity were beyond reproach, and that he was going to be an impartial arbiter

in whatever proceedings that were going to be conducted by him. It was expected that he was not involved, implicated, linked or associated with human rights violations of any kind or in any matter which the Commission is supposed to investigate. But now, he is faced with a situation where his past has allegedly been dug out and his own Commission may very well be seeking to investigate him. The issue is not whether the allegations being levelled against him are true. What is material is that the Commission will want to investigate the circumstances surrounding the death of Robert Ouko, the Wagalla Massacre and the Ndung'u Report on illegal/irregular allocation of public land and in each case he is being adversely

Reference 148 - 0.01% Coverage

The Commissioners are also concerned that Ambassador Kiplagat swore under oath before the panel that selected the Commissioners that he "has not in any way been involved, implicated, linked, or associated with human rights violations of any kind or in any matter which is to be investigated" by the Commission. (See Section 10(6)(b) of the Act.)

Reference 149 - 0.06% Coverage

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Reference 150 - 0.01% Coverage

Kenya National Commission on Human Rights

Reference 151 - 0.01% Coverage

UNDP KHRC Kenya Human Rights Commission

Reference 152 - 0.01% Coverage

6 NCIC Act, sec 2 7 Draft Ethnic and Race Relations Policy, NCIC, 2012 8 S Kinyanjui & G Maina 'Ethnic conflict in Kenya: An analysis of the politicization of ethnicity and the impact of free markets on ethnic relations' in Kenya Section of the International Commission of Jurists Ethnicity, Human Rights and Constitutionalism in Africa (2008) 80.

Reference 153 - 0.01% Coverage

13 On such arrangements, see generally A El-Obaid and K Appiagyei-Atua 'Human rights in Africa: A new perspective of linking the past to the present' (1996) 41 McGill Law Journal 821.

Reference 154 - 0.01% Coverage

44 A Korwa and I Munyae 'Human rights abuses in Kenya under Daniel arap Moi 1978–2001' (2001) 5/1 African Studies Quarterly available at: <http://web.africa.ufl.edu/asq/v5/v5i1a1.htm> (accessed on 15 April 2012).

Reference 155 - 0.01% Coverage

65. President Moi quickly became preoccupied with suppressing his perceived opponents. This preoccupation with limiting dissent and consolidating power accelerated after the attempted coup in 1982. Campaigns to address corruption, ethnicity and human rights abuses fell aside as President Moi and his government centralized power and tackled dissent.⁵²

Reference 156 - 0.01% Coverage

51 Weekly Review, Nairobi 30 Nov 1979 as cited in DP Aluhwalia (1996) 52 'Human rights abuses in Kenya under Daniel arap Moi 1978–2001' (2001) 5/1 African Studies Quarterly available at: <http://web.africa.ufl.edu/asq/v5/v5i1a1.htm> (accessed on 15 April 2012).

Reference 157 - 0.01% Coverage

66 See generally G Njuguna The lie of the land evictions and Kenya's crisis, 2 African Policy Brief (2008). 67 Kenya National Commission on Human Rights 'Unjust enrichment' (2004) 1. 68. As above.

Reference 158 - 0.01% Coverage

73 African Peer Review Mechanism (n 8 above) 46. 74 Kenya National Commission for Human Rights 'Unjust enrichment' (2004) 17. 75 Ministry of Justice, National Cohesion and Constitutional Affairs 'Sessional Paper No. 2 of 2012 on National Cohesion and Integration' (March 2012) 10.

Reference 159 - 0.03% Coverage

86. Various reports by human rights and humanitarians organisations have highlighted not just the plight of IDPs in camps but the lack of a coherent response from the various governmental agencies responsible for IDPs issues. This give an inclination of a serious absence of political will to effectively resolve the issues of displaced people. A report by the KNCHR/FIDH discusses how the National IDPs Network together with KHRC petitioned the office of the President, the Ministry of Justice and the Ministry of Lands which subsequently made the government to respond to their concerns especially from the security, land and governance perspective.⁸⁵ November 2004 President Kibaki set up a Task Force aiming at collecting data on IDPs, registering them and making recommendations for their assistance.⁸⁶

Reference 160 - 0.01% Coverage

83 See Chapter on Gender and Gross Violations of human rights: Focus on Women in Volume 2C of this Report. 84 FIDH & KHRC, Massive Internal Displacements in Kenya Due to politically Instigated Ethnic Clashes (2007), 21 85 FIDH & KHRC, Massive Internal Displacements in Kenya Due to politically Instigated Ethnic Clashes (2007), 22 86 ibid 87 Ibid

Reference 161 - 0.02% Coverage

88. One of the key priorities of the National Accord is the resettlement of IDPs languishing in camps and other places. Through the Ministry of State for Special Programmes (MoSSP) a resettlement programme dubbed 'Operation Rudi Nyumbani' (ORN) was launched on 5th May 2008. However, reports by human rights organisation revealed that the resettlement programmes was not working because it was not well thought out and its implementation was viewed as premature with poor coordination between government ministries, particularly with reporting mechanism and accountability.⁸⁸

Reference 162 - 0.01% Coverage

88 KHRC, Out in the Cold, The Fate of Internally Displaced Persons in Kenya (2008-2009), 23 89 KHRC, Out in the Cold, The Fate of Internally Displaced Persons in Kenya (2008-2009), 24 90. TJRC/Hansard/Women's Hearing/Kisumu/16 July 2011/p. 5 91 United Nations Human Rights Kenya, Durable Solutions to Internal Displacement, Reconciliation and Restoration of Human Dignity of IDPs in Kenya: A Situation Report (2011), 9

Reference 163 - 0.03% Coverage

victims of sexual violence may run into the hundreds. Up to 45,000 people were displaced. The Commission presents the Mount Elgon conflict as a case study of a conflict that sits at the intersection of three volatile trends that dominated the mandate period. These trends are: ethnic identity and land and electoral politics. Individually these trends are disruptive. Collectively, however, they carry the potential for deep and sustained crisis with serious implications for the protection and violation of human rights. This is then the case study that Mount Elgon presents.

1 Human Rights Watch, All the Men Have Gone: War Crimes in Kenya's Mt. Elgon Conflict, at 27 (July 2008), available at <http://www.hrw.org/sites/default/files/reports/kenya0708webwcover.pdf> [hereinafter Human Rights Watch Report 2].

Reference 164 - 0.01% Coverage

The militia became involved in a variety of human rights abuses, including rape, torture, murder, abductions, and assaults. In February 2007, Matakwei had threatened that the SLDF would attack neighbouring areas if the government did not move swiftly to resettle squatters.⁸²

Reference 165 - 0.01% Coverage

missions, however, were also riddled with allegations of human rights abuses, including beatings, looting and burning of houses and food granaries, raping of

Reference 166 - 0.01% Coverage

127 For more on the Rapid Deployment Unit, <http://www.administrationpolice.go.ke/aptrdu.php> 128 Human Rights Watch, *All the Men Have Gone: War Crimes in Kenya's Mt. Elgon Conflict*, at 27 (July 2008), available at <http://www.hrw.org/sites/default/files/reports/kenya0708webwcover.pdf> [hereinafter Human Rights Watch Report 2].

Reference 167 - 0.06% Coverage

106. Despite the reports that human rights abuses had occurred, the government largely considered the operation a success in subduing SLDF. The Ministry of State for Defence stated that when the operation ended, large quantities of weapons had been recovered, the leaders and members of SLDF had been identified and arrested, and that the people of Mt. Elgon 'were appreciative of the efforts made by the Army to rid them of the menace of SLDF that had dogged them for so long.'¹³⁴

129 Kenya National Commission on Human Rights, *The Mountain of Terror: A Report on the Investigations of Torture by the Military at Mt. Elgon*, at 10 (May 2008), available at <http://www.scribd.com/doc/6337545/KNCHR-Report-on-the-Mt-Elgon-Violence> [hereinafter KNCHR Report].

130 20 Parachute Battalion is the only commando unit in the Kenya Army that is trained in counter-terrorism tactics by both the United States and the UK-based "Operation Monogram." Operation Monogram" provides counter-terrorism training and equipment to foreign security forces in parts of the world that the British Government sees as threatening or breeding extremism. Because of its shared border with war-torn Somalia and its own experiences with terrorist attacks, particularly the US embassy bombing in 1998, Kenya was one of the first beneficiaries of this program. After the allegations of human rights abuses at Mt. Elgon came to light, Human Rights Watch specifically called on the British Government to stop training Kenyan security forces. Ben Rawlence, *Trained in Terror*, Human Rights Watch (July 30, 2008), available at <http://www.hrw.org/en/news/2008/07/29/trained-terror>.

Reference 168 - 0.01% Coverage

132 Human Rights Watch Report, (n 128 above) 2-3. 133 Human Rights Watch Report (n 128 above) 2.

134 Kenya Ministry of State for Defense, *Operation Okoa Maisha* (2010), available at http://www.mod.go.ke/army/?page_link=okoa%20maisha.

Reference 169 - 0.02% Coverage

109. Although the DSIC's account, as well as that of the government, portrays the army's role to primarily provide security to police units conducting search operations, witnesses and victims interviewed about the human rights abuses confirmed that those who passed through Kapkota were arrested by men in military uniform and transported in military trucks to Kapkota where soldiers were responsible for beatings and interrogations. Those interviewed specifically used the word "jeshi," which is the Swahili word meaning army soldier, as opposed to "askari" meaning an armed guard.¹³⁷

Reference 170 - 0.02% Coverage

described a very different chain of command from that detailed by the Kenyan Government in an interview with Human Rights Watch. The intelligence officer said that while many police were present at the camp in Kapkota, they were all dressed in military uniforms and taking orders from the military commander. He described the military as "firmly in control" of operations at Kapkota and

135. Special Rapporteur Report (n 131 above) para 49. 136 As above. 137. Human Rights Watch (n 128 above) 41. 138 As above. 139. Special Rapporteur Report (n 131 above) para 459.

Reference 171 - 0.01% Coverage

111. In consideration of these reports and interviews, it is clear that the military was in operational command over the purportedly "joint" mission. This chain of command suggests that not only did the commander of the military, Col. Boiwo, know what was taking place during the round-up in the villages and later at the camps, but he also played an active role in allocating orders that led to the alleged human rights abuses.

Reference 172 - 0.01% Coverage

Human Rights Violations and Operation Okoa Maisha

113. In recent years, numerous human rights organizations have reported on Operation Okoa Maisha. The reports and interviews conducted by Médecins Sans Frontières, Human Rights Watch,

Reference 173 - 0.01% Coverage

Commission on Human Rights, Mwatikho Torture Survivors Organisation, and Western Kenyan Human Rights Watch all reveal similar human rights violations that occurred during the initial round-up, at the military camps, and in the aftermath of the operation.

Reference 174 - 0.01% Coverage

142 London Wikileaks. Kenya/CT: UK Reconsiders Counterterrorism Training Program Following Accusations of Human Rights Violations, The Telegraph, 4th

Reference 175 - 0.01% Coverage

UK-RECONSIDERS-CT-TRAINING-PROGRAM-FOLLOWING-ACCUSATIONS-OF-HUMAN-RIGHTS-VIOLATIONS. html

Reference 176 - 0.01% Coverage

Volume III Chapter TWO to include 'human rights components' in the training offered to the 20th Para.143

Reference 177 - 0.01% Coverage

human rights violations during their pursuit of SLDF fighters. The government blamed another unnamed unit based near 20th

Reference 178 - 0.01% Coverage

may have gone some way to leading the Kenya Desk at Operations Donzel and Monogram to observe that there was no 'concrete evidence' behind the allegations. The Commission has come to the conclusion

that there have been high level tactical and strategic attempts to shield 20th allegations of human rights violations.

Reference 179 - 0.01% Coverage

143 London Wikileaks. Kenya/CT: UK Reconsiders Counterterrorism Training Program Following Accusations of Human Rights Violations, The Telegraph, 4th

Reference 180 - 0.04% Coverage

Kenya's history has been characterised by tragic episodes of gross violations of human rights. Most of these atrocities were committed between 1963 and 2002 during which Kenya African National Union (KANU) was at the helm of power. KANU, the independence party, and under the leadership of President Jomo Kenyatta and later President Daniel Arap Moi, created an authoritarian, oppressive and corrupt state. It created a traumatised nation of thousands of individuals living with physical and psychological wounds in a country that had no time or space for their experiences and stories. Indeed, for decades, Kenya has remained a nation in which communities stand divided along ethnic and regional lines suspicious and distrustful of one another. Over the decades feelings of intercommunities distrust, even hatred, have festered mainly because a myriad of issues which are at the core of nation building have largely remained unresolved. These issues include land problems, inequality and regional imbalances, and impunity combined with a lack of transparency and accountability. These issues have eroded a sense of belonging, nationhood, and public trust in political and governance institutions.

Reference 181 - 0.02% Coverage

their forefathers and mothers. Until now, the scale and impact of human rights violations and historical injustices have neither been fully acknowledged nor sufficiently addressed. This has in turn nurtured an atmosphere of latent tension, hatred and suspicion among individuals and communities. This tension flared up in December 2007 following the declaration of the results of the Presidential Election. The outcome was an unprecedented tragedy in Kenya's history: a violent conflict in which an estimated 1,133 people died while approximately 650,000 were displaced from their homes and property worth billions of shillings destroyed through arson and other forms of attacks.

Reference 182 - 0.03% Coverage

platform for non-retributive truth telling' in the hope that such a conversation 'would chart a new moral vision' and ultimately lead to reconciliation. Secondly, section 5(j) of the Act required the Commission to provide 'repentant perpetrators or participants in gross human rights violations with a forum to confess their actions as a way of bringing reconciliation'. Further, the Commission was mandated under section 6(s) of the TJR Act to 'inquire into the causes of ethnic tensions and to make recommendations on the promotion of healing, reconciliation and coexistence among ethnic communities'. Finally, under Section 6(j) of the Act, the Commission was mandated to 'investigate any other matter that it considers requires investigation in order to promote and achieve national reconciliation'.

Reference 183 - 0.02% Coverage

violations of human rights to tell their stories; and WHEREAS, section 42 read together with sections 2, 5(2), 6(2) empower the Commission to

investigate, receive information and propose policies, measures and ways to the government by which identified victims of gross human rights violations can be redressed; and WHEREAS, the TJRC is required to create an accurate and complete historical record of gross violations of human rights; WHEREAS, the TJRC will make recommendations in relation to memorialisation;

Reference 184 - 0.01% Coverage

1. The limited peace and harmony, justice and unity among Kenyans are attributable in part to the gross violations of human rights including tortures, assassinations, detentions, marginalisation and other serious socio-economic violations suffered by sections of the Kenyan population.

Reference 185 - 0.02% Coverage

4.3. In a context where inter-ethnic rancour and disharmony triggered by the struggles for power, resources, identity etc., has underpinned or facilitated some gross violations of human rights, the mending of social relations is an important goal for the TJRC. Communities include ethnic, religious groups and other groups. The TJRC will facilitate dialogues and other activities that commence the process of inter-community reconciliation.

Reference 186 - 0.03% Coverage

5 The members of the Reconciliation Reference Group were drawn from, inter alia, the following organizations and institutions: Nairobi Peace Initiative –Africa; Change Agents for Peace International Initiative; COPTRE; Peacenet; Kenya Inter-religious Consortium; Prophetic prayers Network; Bunge la Mwanainchi Human Rights Group; Kenya Correspondents Association; Kibera Women for Peace & Fairness; Daystar University; Ministry of Justice; KIRAC; National Steering Committee; Chemi Chemi ya Ukweli; Coalition For Peace in Africa; Jesuit Hakimani Centre; National Cohesion and Integration Commission; SUPKEM; Positive Peace Initiative; Nairobi School of Theology; PACT Kenya; Catholic Peace and Justice Commission; National Council of Churches; Refugee Consortium of Kenya; Damietta; Usalama Forum; and Refugee Consortium of Kenya

Reference 187 - 0.02% Coverage

41. As indicated at the beginning of this Chapter, the Commission was required to provide 'repentant perpetrators or participants in gross human rights violations with a forum to confess their actions as a way of reconciliation'. The Commission sent out invitations to persons who had been adversely mentioned requiring them to not only record their statements and submit memoranda, but also to respond to the allegations made against them.

Reference 188 - 0.02% Coverage

Two years later, the KNDR Monitoring Project had similar concerns: The Truth, Justice and Reconciliation Commission (TJRC) and the National Cohesion and Integration Commission (NCIC) have continued their efforts to inquire into human rights violations and prevent future violence, respectively. However, without political support for the work of these commissions, their impact on ethnic relations and deterrence capacity for future dissonance remains uncertain.²⁹

Reference 189 - 0.09% Coverage

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Reference 190 - 0.04% Coverage

The first chapter in this volume sets out the Commission's findings and recommendations. The findings are based upon the facts and analysis in the Report itself, as well as additional research and investigations undertaken by the Commission. It is, understandably, one of the most highly anticipated parts of the Report. The Commission received a broad range of ideas concerning recommendations. Not all of them could be included. In choosing which recommendations to include, the Commission was conscious of, on the one hand, honoring the commitment and sacrifice of the thousands of people who participated in the process, and the thousands who suffered and continue to suffer from the legacy of historical injustices and gross violations of human rights, and on the other hand, the understandable limitations of a government that has a broad mandate in areas of economic development, welfare, education, and security. In other words, the Commission strove to make meaningful and reasonable recommendations which, it is hoped, will have a higher chance of implementation. Better to have fewer recommendations that are implemented, than many recommendations that gather dust on a bureaucrat's shelf.

Reference 191 - 0.03% Coverage

Lastly, the third chapter sets out the Commission's proposed reparations policy and framework. Reparations are key to the legitimacy of a truth commission, and particularly for this truth commission which is the first of its kind to have "Justice" in its title. Justice was achieved in part by the acknowledgement the Commission provided to witnesses who engaged with the Commission through the statement taking process and public hearings. Justice was also achieved in part by the identifying of individuals or institutions responsible for specific historical injustices and gross violations of human rights. Justice is further achieved by the recommendations the Commission made with respect to further investigations and prosecutions, set out in Appendix 1 of Chapter 1 of this Volume.

Reference 192 - 0.01% Coverage

Kenya National Commission on Human Rights

Reference 193 - 0.02% Coverage

The Truth, Justice and Reconciliation Act (TJR Act) required the Truth, Justice and Reconciliation Commission (the Commission) to make findings in respect of gross violations of human rights inflicted on persons by the State, public institutions and holders of public office, both serving and retired, between 12 December 1963 and 28 February 2008. The Act stipulated that such findings must include the Commission's conclusions on: the antecedents, circumstances, factors and context of such violations; the causes, nature and extent thereof; and perpetrator responsibility and motives.¹ its findings in this Report.²

Reference 194 - 0.03% Coverage

The Commission has made findings of responsibility against individuals where such persons had an adequate opportunity to respond to allegations in interviews, hearings or in writing. However, a significant number of adversely mentioned persons did not respond to the Commission's invitation to respond to allegations levelled against them. In the absence of a response from such AMPs, the Commission presumed the allegations as levelled against them to be truthful. This is in accordance with the jurisprudence of quasi-judicial human rights bodies. In the practice of the African Commission on Human Rights and Peoples' Rights and the Inter-American Commission on Human Rights (IACHR) the facts alleged in a complainant's petition is presumed to be true if the respondent state has not provided responsive information during the maximum period set by the respective commissions.³ Similarly, the Human Rights Committee has established the practice

Reference 195 - 0.01% Coverage

See IACHR Rules of Procedure, rule 38; *Lawyers for Human Rights v Swaziland* (2005) AHRLR 66 (ACHPR 2005).

D McGoldrick *The Human Rights Committee: Its role in the development of the International Covenant on Civil and Political Rights* (1994) 145-150.

Reference 196 - 0.03% Coverage

Some also asked about the role of the Commission with respect to the 2007 PEV. As noted earlier, it was the 2007 PEV that provided the immediate impetus for the creation of the Commission, and that period of Kenya's history is clearly within the temporal mandate of the Commission. Consequently the Commission heard a good deal of testimony concerning the PEV. The Commission, however, limited the amount of resources that it devoted to that period for three reasons. First, the period of post-election violence was a very small part of the time period in which the Commission was to examine historical injustices and gross violations of human rights. Second, a previous commission of inquiry – the Commission of Inquiry on the Post-Election Violence, also known as the Waki Commission – had focused specifically and narrowly on violations during this period. Third, through its focus on initially six, and now three, individuals, the ICC was and is investigating this period of Kenya's history.

Reference 197 - 0.01% Coverage

- Measures to prevent the future occurrence of human rights violations.

Reference 198 - 0.03% Coverage

The Commission was also mandated to recommend the grant of amnesty in respect of certain offences. However, as explained in the mandate chapter of this Report, the Commission did not process any amnesty applications and as such no recommendations pertaining to amnesty have been made. The Commission was also mandated to recommend a reparation framework that would serve as the basis for repairing the harm suffered by victims and survivors of gross violations of human rights and historical injustices. Chapter Three of this Volume sets out the Commission's recommendations in relation to reparations. Finally, the Commission was required to make recommendations on the mechanism and framework for the implementation of its recommendations. Chapter Two of this Volume makes recommendations relating to such a mechanism.

Reference 199 - 0.02% Coverage

Like truth commissions before it, the Commission had to consider whether or not to recommend lustration. The term lustration is derived from the Latin *lustrum* and refers to a process of purification. In the field of transitional justice, the process of lustration has been used to remove from public office individuals who are associated with past human rights violations. It has also been used to prevent individuals associated with human rights violations from holding public office in the future.

Reference 200 - 0.01% Coverage

The United Nations recognize the important role that vetting and lustration can play in the prevention of future human rights abuses and violations by the State.⁸

Reference 201 - 0.01% Coverage

violations by public officers who have committed such violations in the past, and restoring the population's trust in the State after a period of systematic human rights violations.

Reference 202 - 0.02% Coverage

21. However, the prevalence of impunity throughout the history of Kenya compelled the Commission to consider lustration for past abuses committed by individuals while acting in an official capacity. The Commission considered that tackling impunity is a necessary and urgent step in the full restoration of the rule of law in Kenya, in establishing lasting peace and stability, and in fostering reconciliation. For this reason, the Commission has recommended that specific individuals should not hold public office in Kenya's constitutional order on account of their past conduct and/or decisions which resulted in gross violations of human rights.

Reference 203 - 0.01% Coverage

Rule of Law Tools for Post-Conflict States: Vetting, an operational framework, Office of the High Commissioner for Human Rights (OHCHR), United Nations, New York and Geneva (2006) 1. This process has been referred to as de-Baathification.

Reference 204 - 0.01% Coverage

The Commission finds that between 1895 and 1963, the British Colonial administration in Kenya was responsible for unspeakable and horrific gross violations of human rights. In order to establish its authority in Kenya, the colonial government employed violence on the local population on an unprecedented scale. Such violence included massacres, torture and ill-treatment and various forms of sexual violence.

Reference 205 - 0.01% Coverage

The Commission finds that between 1963 and 1978, President Jomo Kenyatta presided over a government that was responsible for numerous gross violations of human rights. These violations included:

Reference 206 - 0.01% Coverage

The Commission finds that between 1978 and 2002, President Daniel Arap Moi presided over a government that was responsible for numerous gross violations of human rights. These violations include:

Reference 207 - 0.01% Coverage

- unlawful detentions, and systematic and widespread torture and ill-treatment of political and human rights activists;

Reference 208 - 0.01% Coverage

The Commission finds that between 2002 and 2008, President Mwai Kibaki presided over a government that was responsible for numerous gross violations of human rights. These violations include: ▪ unlawful detentions; ▪ extra judicial killings; and ▪ economic crimes and grand corruption

Reference 209 - 0.01% Coverage

The Commission finds that state security agencies, particularly the Kenya Police and the Kenya Army, have been the main perpetrators of bodily integrity violations of human rights in Kenya including massacres, enforced disappearances, torture and ill-treatment, and sexual violence.

Reference 210 - 0.02% Coverage

The Commission finds that Northern Kenya (comprised of the former North Eastern Province, Upper Eastern and North Rift) has been the epicenter of gross violations of human rights by state security agencies. Almost without exception, security operations in Northern Kenya have been accompanied by massacres of largely innocent citizens, systematic and widespread torture, rape and sexual violence of girls and women, looting and burning of property, and the killing and confiscation of cattle and other livestock.

Reference 211 - 0.01% Coverage

The Commission finds that women and girls have been the subject of statesanctioned systematic discrimination. Although discrimination against women and girls is rooted in patriarchal cultural practices,

the state has traditionally failed to curb harmful traditional practices that affect women's enjoyment of human rights.

Reference 212 - 0.07% Coverage

The Commission recommends that the President, within six months of the issuance of this Report, offer a public and unconditional apology to the people of Kenya for all injustices and gross violations of human rights committed during the mandate period. The Commission recommends that State security agencies, and in particular the Kenya Police, Kenya Defence Forces, and the National Intelligence Service apologize for gross violations of human rights committed by their predecessor agencies between 12 December 1963 and 28 February 2008, especially acts of extra-judicial killings, arbitrary and prolonged detention, torture and sexual violence. The Commission recommends that the Kenyan Government considers entering into negotiations with the British government with a view to seeking compensation for victims of atrocities and injustices committed during the colonial period by agents of the colonial administration. This should be done within 12 months of the issuance of this Report. The Commission recommends that the British government offer a public and unconditional apology to the people of Kenya for all injustices and gross violations of human rights committed by the colonial administration between 1895 and 1963. The Commission recommends that the Judiciary apologize to the people of Kenya for failing to address impunity effectively and perform its role of deterrence to prevent the perpetration of gross human rights violations, during the period between 12 December 1963 and 28 February 2008. The Commission recommends the creation of a National Human Rights Day on 10 December, to coincide with the international Human Rights Day, which will be used to promote respect for human rights in Kenya. The Commission recommends that the judiciary fast-tracks the establishment of the International Crimes Division of the High Court which shall be responsible for the trial of some of the cases referred to the Director of Public Prosecutions for investigations and prosecution.

Reference 213 - 0.02% Coverage

The Commission recommends that the fast-tracking of the enactment of human rights related laws as envisaged by the Constitution of Kenya, including on: freedom of the media; fair hearing; and rights of persons held in custody or detained.

The Commission recommends that the government makes a declaration in terms of article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights thus allowing individual victims of human rights violations who have exhausted local remedies to directly access the African Court.

Reference 214 - 0.01% Coverage

Factors that Encouraged Perpetuation of Gross Violations of Human Rights

Reference 215 - 0.01% Coverage

The Commission finds that the following factors encouraged the perpetuation of gross violations of human rights during the mandate period: • The failure of the first government in independent Kenya (led by President Jomo Kenyatta) to dismantle the repressive state structures established by the colonial government.

Reference 216 - 0.02% Coverage

- The failure of the state to investigate and punish gross violations of human rights. The Commission finds that in most cases, the state has covered-up or downplayed violations committed against its own citizens, especially those committed by state security agencies. During the entire mandate period (1963-2008), the state demonstrated no genuine commitment to investigate and punish atrocities and violations committed by its agents against innocent citizens.

Reference 217 - 0.02% Coverage

40. Colonial violence reached its zenith in the 1950s (and mainly during the emergency years), a time when communities in Kenya staged a fight for political and economic self-determination. The British interned thousands of Africans in detention camps set up around the country. The treatment at these camps was brutal. Information about what happened at the camps was carefully controlled and the British colonial office consistently denied reports of torture and other gross violations of human rights.

Reference 218 - 0.01% Coverage

The Commission finds that the Indemnity Act not only covered up human rights abuses and other violations of both Kenyan and International Law, but itself is a violation of international law as it denies the victims of the conflict access to truth,

Reference 219 - 0.02% Coverage

The Commission is satisfied that the DSC, the PSC and the Kenya Intelligence Committee (KIC) knew or should have known that the security approach adopted would lead to gross violations of human rights, including the deaths of innocent individuals. None of the members of these bodies learnt any of the lessons from earlier massacres, such as the 1980 massacre in Garissa (Bulla Karatasi). Alternatively these persons chose to ignore such lessons.

Reference 220 - 0.02% Coverage

The security operation also resulted numerous other gross violations of human rights, including torture, and sexual violence. The security agents used heavy artillery and bombed the following areas in West Pokot District: Kadam Hill; Achalau Hill; Lorusuk Hill; Kasei Hill; Chepyomot (Cheloboi arear); Tarakit Hill; Alale; Nauyapong; and Kishiaunet. Moreover, the security agents confiscated or killed livestock belonging to the local population.

Reference 221 - 0.01% Coverage

145. The Commission finds that unlawful detention in the form of prolonged pre-trial detention is a continuing violation of human rights even up to today. Thousands of inmates in Kenya are still awaiting an opportunity to defend themselves in court, sometimes for years.

Reference 222 - 0.01% Coverage

146. The Commission recognizes the role played by the media, civil society organizations and faith based organizations in advocating for respect for human rights and championing the release of political prisoners.

Reference 223 - 0.01% Coverage

161. The Commission finds that despite Kenya ratifying many international human rights instruments and having enacted various pieces of domestic legislation with regard to sexual violence, the failure to implement fully such legislation has not only left many Kenyans exposed to sexual violence but also denied the victims of sexual violations access to justice.

Reference 224 - 0.02% Coverage

170. The Commission finds that despite Kenya having ratified many international human rights instruments and having enacted various domestic laws that promote the rights of women, the existence of structural and systematic discrimination against women by the state itself prevented women from fully enjoying their rights. Some laws were manifestly discriminatory whereas others were discriminatory in their effects. Other laws such as the Judicature Act sanctioned customary practices which were manifestly discriminatory.

Reference 225 - 0.01% Coverage

172. The Commission finds that violations of human rights have had greater consequences for the most vulnerable amongst women. These include: women with disabilities, women living with HIV/Aids, women in the rural areas and women from minority and indigenous communities. Moreover, economic marginalization of specific parts of the country has further marginalised women living in these regions.

Reference 226 - 0.03% Coverage

179. The Commission finds that although men were the predominant victims of repressive and authoritarian means employed by the state, women were also victims, both as primary and secondary victims. As primary victims, scores of women, especially politicians, academics or human rights activists, and female Members of Parliament who were vocal in their opposition to repressive rule in both Kenyatta's and Moi's administrations, were often detained, tortured and subjected to politically motivated charges. As secondary victims of state repression, many women were widowed after their husbands were killed in security operations or died in police custody after undergoing torture. Some were subsequently thrown into destitution following the detention or death of their spouses.

180. The Commission further finds that although men were the main active agents of President Kenyatta's and President Moi's repressive governments, some women were also involved in the perpetuation of gross violations of human rights.

Reference 227 - 0.01% Coverage

The Commission recommends that the Gender and Equality Commission steps up measures to raise awareness about harmful cultural practices that adversely affect women's enjoyment of human rights.

Reference 228 - 0.01% Coverage

195. The Commission finds that during the mandate period, children were both direct and indirect victims of gross violations of human rights. As direct victims, they suffered atrocities including killing, maiming,

torture and sexual violence. Children also witnessed atrocities and as a result of which many of them remain traumatized.

Reference 229 - 0.07% Coverage

The Commission recommends that the President, within six months of the issuance of this Report apologizes for atrocities committed against children during the mandate period. The Commission recommends that psychosocial and counseling services be provided to children victims of gross violations of human rights and injustices. The Commission recommends that reparation be provided to children victims of gross violations of human rights and injustices in accordance with the Commission's Reparation Framework. The Commission recommends that Borstal institutions be placed under the Department of Children's Services in the Ministry of Gender, Children and Social Development as opposed to the Prisons Department in the Ministry of Home Affairs. These institutions should be removed from prisons' premises and should be run by children officers trained in counseling and psychology. The Commission recommends that children's desks at police stations be well funded and in the meantime only officers who have been trained on child rights should deal with children. Gradually all officers should be trained on child rights and child sensitive procedures. The Commission recommends that more remand homes be established to avoid placing of alleged juvenile delinquents in police cells and prisons. The Commission recommends that restorative justice mechanisms be formally introduced in the juvenile justice system and police officers should be sensitized and trained on how to set these in motion. Structures should be established to incorporate different players such as children's officers and community workers. The Commission recommends that the Department of Children's Services be well funded to adequately respond to violations of child rights. More offices should be established to enhance accessibility to children's officers. The role and availability of children's officers should be publicized for their services to be sought. Although court procedures to enforce parental responsibility are user friendly, there is need to provide more assistance to parties who cannot afford lawyers as

Reference 230 - 0.01% Coverage

256. There is a direct link between corruption and gross violation of human rights. Individuals have been killed, tortured and subjected to other violations of human rights because of their efforts to combat corruption.

Reference 231 - 0.01% Coverage

266. The Commission finds that the SLDF was responsible for numerous gross violations of human rights including killings, torture, mutilation, and sexual violence.

267. The Commission finds that during Operation Okoa Maisha the Kenya Police and the military were equally responsible for gross violations of human rights including killings, enforced disappearance, torture, and sexual violence.

Reference 232 - 0.02% Coverage

269. Since independence, successive governments have employed silence, denial and selective amnesia whenever individuals and agencies have raised the need to address these fundamental issues. Painful memories have been passed from one generation to another, and as a consequence present generations continue to hold grudges for violations and historical injustices meted against their forefathers and

mothers. Until now, the scale and impact of human rights violations and historical injustices have neither been fully acknowledged nor sufficiently addressed.

Reference 233 - 0.03% Coverage

The Commission recommends that alleged perpetrators of ethnic incitement and violence be investigated and prosecuted accordingly, notwithstanding their official or other status. The Director of Public Prosecutions shall ensure that those individuals recommended for investigation or prosecution by previous commissions of inquiry on ethnic violence, namely the Parliamentary Select Committee to Investigate Ethnic Clashes in Western Kenya and Other Parts of Kenya (Kiliku Commission), and Judicial Commission of Inquiry into Tribal Clashes in Kenya (Akiwumi Commission), are prosecuted or investigated. The Director of Public Prosecutions shall also take action in respect to the recommendations of various reports of the Kenya National Commission on Human Rights on ethnic and political violence including its report on the 2007/2008 PEV. The Commission has compiled a list of adversely mentioned persons in these reports to aid their identification.

Reference 234 - 0.01% Coverage

Access to justice and promotion of human rights

Reference 235 - 0.01% Coverage

Designation of 10 December as a National Human Rights Day
Fast-tracking of enactment of human rights related laws as envisaged by the Constitution of Kenya: •
Legislation on freedom of the media (section 34)

Reference 236 - 0.01% Coverage

In addition to the express provisions of the TJR Act, it is noteworthy that in terms of international best practice governments are obliged to 'undertake to give due consideration' to the findings and recommendations of investigative reports into human rights violations.²
The United Nations High Commissioner for Human Rights

Reference 237 - 0.01% Coverage

Report of the independent expert to update the Set of Principles to Combat Impunity, Diane Orentlicher, Addendum: Updated Set of principles for the protection and promotion of human rights through action to combat impunity, Commission on Human Rights, E/CN.4/2005/102/Add.1, principles 12 and 19.
UN Commission on Human Rights, Human Rights Resolution 2005/66: Right to the Truth, 20 April 2005, E/CN.4/RES/2005/66.

Reference 238 - 0.01% Coverage

• Knowledge and experience in matters of transitional justice, human rights, reparations, law, gender or governance. The Chairperson shall be a person of 15 years experience in his/her field of experience while the members shall be persons of 10 years experience in their field of expertise.

Reference 239 - 0.01% Coverage

The Committee shall be supported by a Technical Secretariat headed by a Chief Executive Officer and have a core staff comprising of experts in the following fields: communications/outreach; reparations and transitional justice; land; human rights; reconciliation and peacebuilding; and such other experts whose skills may be relevant in the implementation and monitoring of the Commission's Report.

Reference 240 - 0.01% Coverage

(iii) human rights; (iv) reparations; (v) gender or governance; (vi) public administration;

Reference 241 - 0.01% Coverage

e) one person nominated by the Association of Professional Societies of East Africa; f) one person nominated by the Kenya National Commission on Human Rights;

Reference 242 - 0.01% Coverage

a) be a national fund consisting of moneys for reparation to victims of gross human rights violations and historical injustices;

Reference 243 - 0.02% Coverage

The Commission recognizes that the key objective of reparations is to restore the dignity of victims through acknowledging the wrongdoing, the harm suffered and the state responsibility to promote, protect and fulfil human rights. In that way reparations are a means to contribute to a rebalancing of society and a healing process. These reparation recommendations are designed to be practical and implementable. Other truth commissions' recommendations have demonstrated that this is most often a challenge. Unfortunately, recommending a proportionate and tailored reparation measure for each individual victim would be impractical and impossible to implement.

Reference 244 - 0.05% Coverage

The Constitution of Kenya (2010) at Article 2(5)-(6) stipulates that general rules of international law and any treaty or convention ratified by Kenya shall form part of the law of Kenya. Several regional and international treaties have asserted the right to a remedy and reparation for violations of serious human rights. International Covenant of Civil and Political Rights (1966) (Art 2(3), 9(5) and 14(6); International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (1965) (art 6), Convention on the Right of the Child (1989) (Art 39) Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (1984) (Art 14) and the Statute of the International Criminal Court (1998) (Art 75). Also the African Convention on Human and Peoples' Rights 1981 (Art 21(2), the European Convention for the Protection of Human Rights and Fundamental Freedoms (Art 5(5), 13 and 41) and the American Convention on Human rights 1969 (Art. 25, 63(1) and 68). This right has also been affirmed by regional human rights courts, United Nations bodies and other declarative instruments. E.g. Human Rights Committee, General Comment No. 31 [80] nature of the General Legal Obligation Imposed on State parties to the Covenant 26/05/2004, (u.N. Doc. No. CCPR/C/21/Rev.1/Add.13. at paras. 15-17; United Nations Committee against Torture, GC No.2, Implementation of Article 2 by State Parties (U.N. Doc. CAT/C/GC/2/CRP.1/Rev.4 (2007),) at para 15.

Reference 245 - 0.01% Coverage

The Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law³

Reference 246 - 0.01% Coverage

Those included the International Commission of Jurists – Kenya (ICJ), the Kenya Human Rights Commission (KHRC), GIZ, the Open Society Institute for East Africa (OSIEA), the International Center for Transitional Justice (ICTJ) and the Kenya National Commission on Human Rights (KNCHR).

Reference 247 - 0.01% Coverage

14. Reparation measures are limited to gross violations of human rights as defined in the Commission's mandate under the TJR Act. Gross violations of human rights are those violations that were perpetrated by:

- State agents as part of a policy or systematic course of action
- Non-state actors acting with state complicity as part of a policy or systematic course of action

Reference 248 - 0.01% Coverage

- State or non-state actors as a result of the failure to protect in the context of large-scale human rights violations

Reference 249 - 0.01% Coverage

Only violations occurring between 12 December 1963 and 28 February 2008 are considered eligible within this reparations framework. Gross violations of human rights are categorized as follows:

Reference 250 - 0.01% Coverage

- Disappearances or killings of political actors and human rights defenders in which the state was complicit.

Reference 251 - 0.01% Coverage

- Inhuman and degrading treatment or punishment of political detainees or human rights defenders
- Arbitrary arrests and illegal/prolonged detention of political detainees or human rights defenders

Reference 252 - 0.01% Coverage

17. Human rights violations are by their nature interconnected. As described elsewhere in this Chapter, individuals and communities are eligible for a series of reparation measures. It is the intention of the Commission that this use of multiple measures

Reference 253 - 0.01% Coverage

of gross human rights violations in Categories 1 & 2 above

Reference 254 - 0.02% Coverage

The number of victims of gross human rights violations that took place in Kenya between 1963 and 2008 is vast. As expressed in several research and survey reports, there is a clear demand among victims from across the spectrum that monetary compensation would be the most effective type of reparation for them. However, the class of eligible individuals who may receive financial compensation must be narrowed in order to make any reparations programme financially feasible. In addition, it has to be recognized that the necessarily limited amounts of monetary compensation may not be sufficient to have a sustainable and meaningful impact on the lives of the victims.

Reference 255 - 0.01% Coverage

- For victims who have suffered human rights violations as a group including

Reference 256 - 0.02% Coverage

that individuals have also been victims of land injustices, but the Commission's mandate does not require it to deal directly with those violations. It was clear in the Commission's individual public hearings around the country that land injustices are one of the major contributors to conflict and that land loss and development of lands without any benefit to surrounding communities is one of the major contributors to marginalization and ethnic tensions. The Commission recognizes that land injustices are interconnected with many other human rights violations experienced by

Reference 257 - 0.01% Coverage

communities. As described elsewhere in this Chapter, communities are eligible for a series of reparation measures to address other human rights violations.

Reference 258 - 0.02% Coverage

12 See the United Nations Declaration on the Rights of Indigenous Peoples, Human Rights Council, Report to the General Assembly on the First Session of the Human Rights Council, at 58, U.N. Doc. A/HRC/1/L.10 (2006) and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities, G.A. res. 47/135, annex, 47 U.N. GAOR Supp. (No. 49) at 210, U.N. Doc. A/47/49 (1993) for specific parameters related to the right to participation and development. Guidelines should also be based on best practices related to implementation of ILO 196, which can be found at Indigenous & Tribal People's Rights in Practice - A Guide to ILO Convention No. 169.

Reference 259 - 0.01% Coverage

The right to satisfaction for victims of gross human rights violations is internationally recognized by UN General Assembly Resolution 60/140 of 2005¹⁷

Reference 260 - 0.02% Coverage

Section 5 (h) (i) of the TJR Act 2008 defines one of the objectives of the Commission as to promote healing and reconciliation by, among other things, "providing repentant perpetrators or participants in

gross human rights violations with a forum to confess their actions as a way of bringing reconciliation." In addition, the Commission is mandated to looking specifically at the perspectives of victims.¹⁸ The concept of public apologies 46. Public apologies are acknowledgement of wrongdoing by governments and other political entities. States have a general duty to acknowledge past human rights abuses.¹⁹

Reference 261 - 0.01% Coverage

15 Rule of law tools for post-conflict states: reparations programmes, Office of the High Commissioner for Human Rights, United Nations, 2008, page 8

16 Ibid., page 23 17 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN General Assembly Resolution 60/140 of 16 December 2005.

Reference 262 - 0.01% Coverage

20 In various international treaties and conventions, for example the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Genocide Convention, etc. 21 <http://oxforddictionaries.com/definition/apology>

Reference 263 - 0.01% Coverage

re-write the narratives of the past, recognize victims of human rights violations and begin the process of healing and reconciliation.

Reference 264 - 0.01% Coverage

The South African Truth and Reconciliation Commission (SA TRC), in its final report, defined symbolic reparations as "measures aimed at restoring the dignity of victims and survivors of gross human rights violations. These include measures to facilitate the communal process of commemorating the pain and celebrating the victories of the past."³³

Reference 265 - 0.01% Coverage

The National Commission for Truth and Reconciliation in Chile also recommended symbolic reparations in the form of creation of memorials and artistic projects to recognize the memory of victims and promote peaceful coexistence. The Commission also recommended that the government fully use the National Human Rights Day to promote respect for human rights.³⁴

Reference 266 - 0.03% Coverage

a) The Commission recommends that the Government of Kenya, through the President, formally acknowledge the occurrence of and apologize to Kenyans for gross violations of human rights committed in Kenya between 12 December 1963 and 28 February 2008.

b) The Commission recommends that State security agencies, and in particular the National Police Service, the National Defence Forces and the National Intelligence Service, apologize for gross violations of human rights committed by their predecessor agencies between 12 December 1963 and 28 February

2008, especially acts of extra-judicial killings, arbitrary and prolonged detention, torture and sexual violence.

c) The Commission recommends that the Judiciary apologize to the people of Kenya for failing to address impunity effectively and perform its role of deterrence to prevent the perpetration of gross human rights violations, during the period between 12 December 1963 and 28 February 2008.

Reference 267 - 0.02% Coverage

f) The Commission recommends that the Implementation Committee create a sub-committee to call for and consider community proposals for memorialization and for funding for community initiatives aimed at commemoration of past violations, specific events and victims of gross human rights violations.

g) The Commission recommends the creation of a National Human Rights Day on 10 December, to coincide with the international Human Rights Day, which will be used to promote respect for human rights in Kenya.

Reference 268 - 0.01% Coverage

specific category of victims (IDPs from PEV), the Commission recommends that in line with its report (that relates to a wide range of gross violations of human rights), that the implementation of reparations program must relate to and cover all categories of victims.

Reference 269 - 0.02% Coverage

9. The Commission proposes the adoption of the definition of 'victim' used in its report, which is consistent with international human rights instruments, in particular, the Basic Principles on the Right to a Remedy and Reparation and Rule 85 of the International Criminal Court's Rules of Procedure and Evidence. In line with these instruments, a victim is a natural person who has suffered harm as a result of the commission of any gross violation of human rights. A victim includes someone directly affected by the violation, as well as relatives of that direct victim.

Reference 270 - 0.01% Coverage

While serving as the Commanding Officer during the military intervention in Mount Elgon in 2008, dubbed, "Operation Okoa Maisha", he allegedly instigated and/or directed the commission of gross violations of human rights including but not limited to extra-judicial killings, torture, maiming, illegal detentions, destruction and loss of property of the residents of Mount Elgon.

Reference 271 - 0.01% Coverage

Akiwumi Report Pg. 50 KNCHR 2008: On the Brink of the Precipice. A Human Rights Account of Kenya's post-2007 Election Violence. Pg 183

Reference 272 - 0.01% Coverage

Kenya National Commission on Human Rights (2006) "Behaving Badly" referendum Report Pg 30

Liberia -TRC Report-FULL> - § 244 references coded [6.83% Coverage]

Reference 1 - 0.01% Coverage

ii. ‚Gross‘ Human Rights Violations (GHRV) iii. ‚Serious‘ Humanitarian Law Violations (SHLV)

Reference 2 - 0.01% Coverage

‚Egregious‘ Domestic Crimes Foundation for Human Rights ‚Gross Human Rights Violations‘
Human Rights Commission of South Africa Inter-American Commission on Human Rights

Reference 3 - 0.01% Coverage

International Human Rights Law

Reference 4 - 0.02% Coverage

This Report represents the Truth and Reconciliation Commission of Liberia’s (TRC) forthright response to its core mandate of investigating and determining responsibility for ‘egregious’ domestic crimes, ‘gross’ violations of human rights and ‘serious’ humanitarian law violations as well as examining the root causes of Liberia’s various episodes of state breakdown and violent conflicts to recommend measures to ensure that truth, justice and reconciliation become permanent features of Liberia’s socio-economic, political, legal and cultural landscape.

Reference 5 - 0.02% Coverage

Consequently, and as a means to identify the root causes of conflict in Liberia, protect fundamental human rights, end impunity and foster national healing, rehabilitation and reconciliation, the National Transitional Legislative Assembly of the National Transitional Government of Liberia—political bodies born out of the 2003 Comprehensive Peace Agreement (CPA)—acting under Article XIII of the CPA enacted the Truth and Reconciliation Act on June 10, 2005. The TRC began officially operating on February 22, 2006.

Reference 6 - 0.02% Coverage

The Commissioners of the TRC feel very strongly that the future of Liberia rests with Liberians. While the international community has and will continue play a role in assisting Liberia develop a sustainable democracy, only Liberians can establish a durable human rights-based culture where peace, development and the rule of law are permanent features of its political heritage.

Reference 7 - 0.01% Coverage

3. All factions to the Liberian conflict committed, and are responsible for the commission of egregious domestic law violations, and violations of international criminal law, international human rights law and international humanitarian law, including war crimes violations.

Reference 8 - 0.01% Coverage

7. No faction in particular instituted – in some cases to a very limited extent- adequate mechanism to avoid or mitigate massive violations of human rights that characterized the conflict.

Reference 9 - 0.03% Coverage

17. General Human Rights Violations (GHRV) are generally, but not exclusively, committed by state actors, and may take place during times of peace or armed conflict, and can be directed against individuals or a group of individuals.

18. Lack of human rights culture and education, depravation and over a century of state suppression and insensitivity, and wealth acclamation by a privileged few created a debased conscience for massive rights violations during the conflict thus engendering a culture of violence as means to an end, with an entrenched culture of impunity.

Reference 10 - 0.01% Coverage

1. All warring factions are responsible for the commission of gross human rights violations in Liberia, including war crimes, crimes against humanity, IHRL,IHL, ICL, domestic criminal laws

Reference 11 - 0.01% Coverage

5. Reparation is a desirable and appropriate mechanism to redress the gross violations of human rights and shall apply to communities and individuals, especially women and children, to help restore their human dignity, foster healing and closure as well as justice and genuine reconciliation.

Reference 12 - 0.01% Coverage

8. Reform of certain public institutions are appropriate to promote good governance and human rights, reduce poverty and alleviate illiteracy, promote peace, security, national reconciliation and opportunity for all.

Reference 13 - 0.01% Coverage

Cllr. Jerome Verdier, Chaiman of the TRC, was a leading human rights and civil society activist prior to his selection to serve on the TRC. He holds a Bachelors of Business Administration (BBA) Degree in Accounting and Economics (1988) from the University of Liberia

Reference 14 - 0.04% Coverage

and a Bachelors of Laws Degree (LLB) from its Louis Arthur Grimes School of Law. Apart from working both in the private and public sectors as a Senior Accountant, Comptroller and Executive Director, he has been instrumental in strengthening civil society advocacy while serving in several capacities as Executive Director of Liberia Democracy Watch (LDW); Chairman of the Board of Directors of The National Human Rights Center of Liberia (NHRCL), a consortium of nine human rights and pro-democracy organizations; Board Chairperson of the Foundation For International Dignity (FIND); Senior Staff Attorney for the Association of Environmental Lawyers (Green Advocates); and the first Research & Program Officer of the Catholic Justice & Peace Commission (JPC). Cllr. Verdier is a practicing attorney, credited for rendering pro bono legal services to indigent persons, civil society activists and journalists, while also leading civil society groups in several lawsuits against the Government of Liberia.

Reference 15 - 0.04% Coverage

Cllr. Pearl Brown Bull has been a lawyer and renowned Liberian politician since the late 70s. She has obtained numerous degrees, including a Bachelor of Arts (BA) in Political Science from the University of Liberia and a Juris Doctor (law) degree from Quinnipiac University, USA. Cllr. Bull has served as Professor of Management & Supervision in Law Enforcement and Criminal Evidence at Shaw University, NC, USA, and held many high-profile public positions including being a member of the Interim Legislative Assembly, Constitutional Advisory Assembly, Public Procurement and Concession Commission, panel of experts for the selection of commissioners of the Independent National Human Rights Commission of Liberia, and Country Vice-President of the International Federation of Women Lawyers. She is a legal drafter with more than a quarter of a century of experience in peace building, conflict resolution and social work.

Reference 16 - 0.04% Coverage

John Stewart is a Liberian journalist, human rights advocate and activist. He is well known for his acerbic writing and interviewing style and has served as Associate Editor of the New Democrat Weekly and presenter of the Radio Veritas Topical Issues program. He was educated at the University of Liberia and has held numerous professional positions including local consultant for the Media Foundation for West Africa; reporter for Channel Africa; Regional Coordinator for the Catholic Justice and Peace Commission; Information Assistant for the United Nations Population Fund (UNFPA); and National Assistant Field Security Advisor to the United Nations Development Program (UNDP). Commissioner Stewart's advocacy efforts have included working with the Citizens of Liberia Against Gambling (COLAG), Citizens of Liberia in Defense of Albert Porte (COLIDAP) and the Movement for Justice in Africa (MOJA). He has been an advocate for the past 30 years and has been imprisoned and tortured for his activism.

Reference 17 - 0.07% Coverage

Dr. Jeremy I. Levitt is currently the sole member of the International Technical Advisory Committee (ITAC) active with the TRC. Professor Levitt was nominated by the United Nations High Commissioner for Human Rights at the beginning of 2008, and appointed by Her Excellency President Ellen Johnson-Sirleaf on July 31, 2008. He is an Associate Dean for International Programs and Distinguished Professor of International Law at Florida A&M University College of Law in Orlando, Florida. Dr. Levitt is a public international lawyer, political scientist and historian. Prior to joining the legal academy, Dr. Levitt served as Special Assistant to the Managing Director for Global Human and Social Development at The World Bank Group in Washington, D.C., and held a variety of global orientated positions in the public and private sectors. He served as a Legal Aide to the Constitutional Assembly of the Parliament of the Republic of South Africa during the country's constitutional making process, and assisted in drafting its 2005 Promotion of National Unity and Reconciliation Act. Dr. Levitt is an internationally recognized scholar having authored several books and law review articles. He is the author of widely acclaimed text, *THE EVOLUTION OF DEADLY CONFLICT IN LIBERIA: FROM 'PATERNALTARIANISM' TO STATE COLLAPSE* (Carolina Academic Press, 2005). Professor Levitt earned his B.A. at Arizona State University, his J.D. at the University of Wisconsin-Madison, and his Ph.D. in International Studies at the University of Cambridge, St. John's College.

Reference 18 - 0.08% Coverage

Prof. Kenneth Agyemang Attafouah, Phd, ITAC Member (Ghana) was also a member of ITAC. A Criminologist, Sociologist and Barrister-atLaw and Solicitor of the Supreme Court of Ghana, Ken Attafuah was nominated to the TRC by the United Nation's High Commissioner for Human Rights. He is a former Commissioner of Human Rights in the Province of British Columbia, Canada, where he adjudicated human rights complaints, and a Member of the Canadian Immigration and Refugee Board, where he adjudicated claims to convention refugee status in Canada. Ken Attafuah was the Executive Secretary of Ghana's National Reconciliation Commission. He previously worked as Chief Investigator and Director of Public Education and AntiCorruption at Ghana's Commission on Human Rights and Administrative Justice. He is a former Adjunct Professor of Criminology at the prestigious School of Criminology at Simon Fraser University (SFU) in Vancouver, B.C., Canada, from where he earned his Ph.D. in 1994. Ken Attafuah is also a product of the Ghana School of Law (B.L), the University of Manitoba in Winnipeg, Canada, (M.A., Sociology) and the University of Ghana (B.A. (Hons.), Sociology with Political Science). Prior to his appointment to the TRC of Liberia, Prof. Cllr. Ken Attafuah was an Associate Professor of Governance and Leadership at the Graduate School of Leadership and Public Management at the Ghana Institute of Management and Public Administration (GIMPA). He is the recipient of the Rev. Dr. Martin Luther King, Jr. Memorial Award for outstanding contributions to race relations in Canada (February 1992), and of the much-coveted Vancouver Multicultural Society's Distinguished Public Service Award for outstanding contributions to, and dedicated service in, the promotion of human rights education and multiculturalism in British Columbia, Canada (November 1995). Prof. Cllr. Ken Attafuah's extensive publications

Reference 19 - 0.03% Coverage

record includes a number of decisions that set precedents in human rights in Canada. He has trained and consulted widely, both locally and internationally, in the fields of human rights, adjudication, investigations, conflict resolution, crime, policing, crime prevention, criminal law reform, justice and the rule of law, gender mainstreaming, leadership and governance, corruption and conflict of interest, corporate/organizational re-engineering, peace and development, inter-group relations management, and advocacy and lobbying. He resigned his TRC portfolio late 2007.

Reference 20 - 0.03% Coverage

Article V Section 10 of the TRC Act provides for three ITAC members to be nominated, one by the United Nations High Commission for Human Rights and two by ECOWAS. Due to a number of constraints, two different ECOWAS nominated ITAC advisors were appointed in 2006, but thereafter resigned. In September 2008, one was again nominated by the United Nations High Commissioner for Human Rights and appointed by the President of the Republic of Liberia in July, 2008. The ITAC advisors provide legal and technical advice to TRC Commissioners and are accorded all rights and privileges as Commissioners, except the right to vote.

Reference 21 - 0.02% Coverage

The mandate of the Truth and Reconciliation Commission of Liberia (TRC) is expansive and complex. It is charged with the onerous task of promoting national peace, security, unity and reconciliation by, among other things, investigating, identifying the antecedents of, and determining responsibility for egregious domestic crimes, gross human rights violations and serious humanitarian law violations. Article IV Section 4 of the Act to Establish the Truth and Reconciliation Commission (TRC Act) of 12 May 2005, states:

Reference 22 - 0.03% Coverage

a. Investigating gross human rights violations and violations of international humanitarian law as well as abuses that occurred, including massacres, sexual violations, murder, extra-judicial killings and economic crimes, such as the exploitation of natural or public resources to perpetuate armed conflicts, during the period January 1979 to 14 October 2003; determining whether these were isolated incidents or part of a systematic pattern; establishing the antecedents, circumstances factors and context of such violation and abuses; and determining those responsible for the commission of the violations and abuses and their motives as well as their impact on victims.

Reference 23 - 0.01% Coverage

b. Providing a forum that will address issues of impunity, as well as an opportunity for both victims and perpetrators of human rights violations to share their experiences in order to create a clear picture of the past to facilitate genuine healing and reconciliation;

Reference 24 - 0.02% Coverage

e. Adopting specific mechanisms and procedures to address the experiences of women, children and vulnerable groups, paying particular attention to gender based violations, as well as to the issue of child soldiers, providing opportunities for them to relate their experiences, addressing concerns and recommending measures to be taken for the rehabilitation of victims of human rights violations in the spirit of national reconciliation and healing.

Reference 25 - 0.02% Coverage

From this background, the TRC must not only investigate and determine responsibility for violations of international human rights law (IHRL) and international humanitarian law (IHL) as well as their motives and impact on victims, but also determine the historical antecedents or causes of violent conflict in the country, conduct an audit of Liberian history to offer historical correctives, develop sustainable mechanisms to address gendered and child-based violence and promote national rehabilitation, reconciliation and

Reference 26 - 0.04% Coverage

Due to its broad mandate, the TRC was immediately confronted with the difficult task of assessing which bodies of IHRL and IHL applied to it—a critical question given that the mandate includes determinations on responsibility for egregious domestic crimes, gross violations of IHRL and violations of IHL. The TRC Act broadly defines 'Human Rights violations' as: '(1) violations of international human rights standards, including, but not limited to acts of torture, killing, abduction and severe ill-treatment of any person; (2) violations of international humanitarian law, including, but not limited to crimes against humanity and war crimes.' It further states that 'violations of international humanitarian law' includes the Geneva Conventions of 12 August 1949 and its Additional Protocols.' Based on the legal mandate of the TRC as enumerated in Section 4(a), the TRC adopted a coherent set of categories of crimes, standards and definitions to guide and inform its work.

Reference 27 - 0.08% Coverage

This process required canvassing over fifty human rights, humanitarian and other-related treaties, ascertaining the precise status of regional and customary international law, norms applicable to Liberia as well as examining the jurisprudence and practice of the various international and ad hoc criminal tribunals and truth and reconciliation commissions, respectively. This endeavor was further complicated by the unique temporal mandate of the TRC (from January 1979 to October 2003), which, for example, begins during the Cold War era and continues through the immediate post-Cold War into the twenty-first century. During this twenty-four year period, regional and international law significantly evolved, requiring nuanced analysis and legalistic filtering. For example, prior to the end of the Cold War, there was no comprehensive international protective regime for children; however, since 1990, the African Charter on the Rights and Welfare of the Child (1992), Convention on the Rights of the Child (CRC) (1989), and the Optional Protocol to the CRC on the involvement of children in armed conflict (2004) have crystallized into hard law along with complementary customary international law. Consequently, in 1979, Liberian children had fewer rights under regional and international law than they did in 1999. Not only did the TRC have to account for the evolution of regional and international law but also the critical distinction between IHRL and IHL. Consequently, the TRC addressed these temporal and substantive dichotomies by employing a sequential analysis for reviewing allegations, for developing broad standards, by only making determinations of responsibility using legal precepts applicable at the time that the alleged crimes occurred, and by drawing a fine line between IHRL- and IHL-based violations.

Reference 28 - 0.05% Coverage

situations of armed conflict and peace. IHRL is generally limited in application to violations committed by a state or its agents against citizens, whereas IHL is applicable to state actors and non-state actors alike. In the search to criminalize violations of IHRL and IHL, a new branch of international penal law referred to as international criminal law (ICL) has emerged. After a review of relevant and prevailing regional and international law and standards and in accordance with its mandate, the TRC concluded that while in times of public emergency some human rights treaties permit governments to derogate from certain rights, it is never acceptable to derogate from fundamental human rights (e.g. right to life and personal dignity). It also determined that no derogations are permitted under IHL because it was established to regulate emergency situations, and particularly armed conflict; rules governing the conduct of hostilities and Prisoner of War (POW) status are not applicable in non-international armed conflicts; and there is no derogation from ICL in times of public emergency because it exists to protect the fundamental rights of people through penal sanction.

Reference 29 - 0.03% Coverage

International humanitarian law gives little guidance on how to determine when an armed conflict actually begins and, for this reason, when IHL is applicable to non-international armed conflict. This is a critical issue because, as already noted, situations of internal armed violence short of armed conflict only engender IHRL and ICL; whereas, situations of armed conflict are characterized by IHRL, IHL and ICL. With respect to IHL, the Geneva Conventions of 1948 (I-IV) and Protocol II Additional to the Geneva Conventions of 1977 (Protocol II) provide different standards for determining when armed conflict exists and consequently when the conventions apply. According to the Inter-American Commission on Human Rights

Reference 30 - 0.03% Coverage

using to investigate and determine responsibility including: (1) 'Egregious Domestic Crimes'; (2) Gross Violations of Human Rights Law; and (3) Serious Humanitarian Law Violations. The TRC reserves the right to and will make determinations of responsibility on any persons, groups or entities involved in a joint criminal enterprise or conspiracy including those that planned, instigated, ordered committed, aided or abetted in the planning, preparation or execution of any crime within its mandate. The sections that follow will discuss and define these terms in greater detail.

Reference 31 - 0.05% Coverage

While the TRC mandate is preoccupied with IHRL and IHL violations, it also provides the necessary flexibility to consider other 'abuses' or crimes that are not of an international character but fall into the realm of domestic criminal law violations including sexual violations (e.g. rape and molestation) and murder. Clearly, massacres, economic crimes and extra-judicial killings fall within the ambit of IHRL and IHL; however, to the extent that Liberian law addresses these or related egregious crimes (particularly those classified as first degree felonies), the TRC decided that they would comprise a part of the legal standards used to determine responsibility. This approach provides the TRC with needed flexibility because during times of peace—when only human rights law is applicable—it may investigate and adjudicate responsibility for violations committed by private citizens for private actions under domestic law, not simply crimes committed by the state against private citizens. Hence, to the extent Liberian law criminalizes sexual crimes, murder and massacres, the TRC will use it to determine responsibility where statutes of limitation are not applicable.

Reference 32 - 0.07% Coverage

'Gross' Human Rights Violations (GHRV)

The human rights protective regime is designed to protect individuals and groups of people from abuses of state authority. The TRC Act is almost exclusively concerned with gross violations of civil and political rights to include economic, social and cultural rights, with explicit reference to economic crimes. By definition, the Statute also unambiguously distinguishes between GHRV and milder types of violations enumerated in the International Covenant on Civil and Political Rights (ICCPR) such as the right to freedom of speech and assembly, a fair trial and liberty of movement, and freedom to choose a residence; as well as rights in the International Covenant on Economic, Social and Cultural Rights (ICESCR) such as the right to education, enjoyment of just and favorable work conditions and vacation pay. The TRC Act is clearly preoccupied with violations that bring about death, physical or mental pain and injury or deprivation of freedom and livelihood.

The TRC has determined that GHRV are generally but not exclusively committed by state actors, may take place during times of peace or armed conflict, and can be directed against individuals or groups of people. GHRV abrogate preemptory norms of international human rights law such as: (1) Murder; (2) Extermination; (3) Enslavement; (4) Torture; (5) Rape; (6) Sexual Slavery; (7) Enforced Prostitution; (8) Enforced Sterilization; (9) Sexual Violence; (10) Enforced Disappearance of Persons; (11) Persecution; (12) Deportation or Forcible Transfer of Population; (13) Imprisonment or other Serious

Reference 33 - 0.02% Coverage

In determining procedures the Commission would employ in performing its functions, Article VII, Section 26 (a) stipulates that the TRC should facilitate and, where necessary, initiate or coordinate enquiries into, and investigate 'gross violations and abuses of human rights, privileges, powers and authority in Liberia

including violations, which were part of a systematic pattern of abuse' as well as the ,nature, causes and extent of gross violations and abuses of

Reference 34 - 0.01% Coverage

human rights, including the root causes, circumstances, factors, context, motives and perspectives which led to such violations.'

Reference 35 - 0.04% Coverage

Data collection of the process was both qualitative and quantitative. For qualitative information, the Commission received information through the following means: statement-taking (the statement-taking forms had sections for both qualitative and quantitative information), Inquiry Unit interviews, public and In-camera hearings and testimonies, documented submissions, UN Country reports and assessments, reports of local and international human rights organizations, reports of Liberian civil society organizations, US State Department human right reports, media reports, publications and books. Some of these sources were confidential as well as nonconfidential. For quantitative information, the TRC relied heavily on data and analysis from Beneficial Technology or Benetech, a U.S. based corporation contracted to manage the TRC database, a critical component of its work.

Reference 36 - 0.09% Coverage

Gyude Bryant and afterward received their commissions from Her Excellency President Ellen Johnson-Sirleaf on 20 February 2006. Immediately thereafter, Commissioners underwent various types of training and courses in the history and origin of truth commissions as a form of transitional justice mechanisms, including their functions, goals, objectives and importance in post conflict countries; best practice approaches and experiences of other truth commissions, and human rights and humanitarian law training. Commissioners also received training in the investigation of human rights violations; technical issues in conducting public and in-camera hearings; psychosocial care and support for victims, and others coming before the TRC; conflict prevention and resolution; reparations; and other specialized topics of interest that enabled Commissioners to function within the accepted operational standards of truth commissioners.

The training was facilitated by a combination of local and international experts in the field of international law and transitional justice. An array of institutions including the Economic Community of West African States (ECOWAS), Human Rights Foundation of South Africa (HRCSA), the International Center for Transitional Justice (ICTJ), the United Nations Mission in Liberia (UNMIL), and the locally based Transitional Justice Working Group (TJWG) assisted the TRC during those formidable stages of its work. Dr. Jeremy Levitt provided legal training for the Commission.

In June 2006, prior to the launching of the TRC, the nine member Commission visited South Africa under the auspices of the Human Rights Foundation (FHR) to undertake a study tour of South Africa for orientation and to become acquainted with the country's past truth and reconciliation process in order to experience first-hand how the South African TRC approached and managed its process. The training was well coordinated and intensive, and afforded the Commissioners the rare opportunity to meet and speak one-on-one with former South African Commissioners, staff, human rights advocates, government

Reference 37 - 0.04% Coverage

In recognition of the important role staff plays in effectuating the TRC's mandate, the Commission, with the assistance of several partners, conducted research, writing, analysis, investigative techniques and management skills training for domestic TRC staff. Staff often participated in training alongside Commissioners, while at other times they were trained independently. For example, in 2006, over three hundred staff members were trained as statement-takers, investigators, psycho-social support persons and county coordinators in preparation for the statement-taking, inquiry and hearing processes, and the creation of TRC offices in Liberia's fifteen counties. Data entry staff or coders entrusted to input information into the database from the statement-taking were provided specialized training in this area coordinated by Benetech. The data coders were trained in 2007 in the mechanics of data coding, categorizing of human rights violations, geography of victims' communities and name codification.

Reference 38 - 0.05% Coverage

In order to maintain a balanced perspective, a uniform training program was designed with slight modification to suit the particular needs of the TRC Diaspora Project. The Diaspora Project was implemented by the TRC Diaspora partners, the Advocates for Human Rights, formerly Minnesota Advocates For Human Rights based in Minnesota, U.S.A, and closely supervised and co-managed by the TRC. Training modules in the Diaspora were jointly designed and coordinated to mirror as closely as possible the Liberia program. The TRC created a Diaspora Committee, to closely track and monitor the project. Commissioners made periodic visits to the USA and played a leadership role in several training modules on the TRC mandate, transitional justice, the history of Liberia and its various episodes of conflict, the Liberian Constitution, statement-taking and investigation, human rights law and multiculturalism. The Diaspora Project trained over six hundred volunteers to collect statements from Liberians in the USA. This model of training was replicated with competent modifications for the West Africa Diaspora Project. Ten

Reference 39 - 0.06% Coverage

The TRC's Diaspora Project was innovative because it redefined the way in which truth and reconciliation commissions should operate— from local or nationally-centered bodies to global truth seeking institutions—by conducting international hearings that included testimony and perspectives from its citizens abroad; thereby, raising the bar of ingenuity in transitional justice approaches. The Diaspora Project began in Minneapolis, Minnesota (USA), which is home to approximately 5,000 of the 40,000 Liberians living in the U.S., with the assistance of one of the TRC's key partners, the Advocates for Human Rights, which served as a primary implementer of the Project. The Diaspora project resulted in the collection of approximately 1,500 statements from alleged perpetrators and victims of Liberia's various episodes of state chaos and conflict. The project eventually conducted activities in eleven U.S. cities, Europe and to Ghana, Nigeria, and Sierra Leone where a significant number of Liberian refugees in West Africa reside. Community Advisory Committees comprising credible Liberians were established in each city hosting a project. Numerous outreach events were organized in collaboration with the Advisory committees and often hosted by the various Liberian communities. This approach ensured Diaspora community involvement and support for the Project. Approximately 1000 statements were collected from Liberians in West Africa.

Reference 40 - 0.04% Coverage

In adhering to these requirements, the TRC has engaged in numerous activities with women in Liberia and in the Diaspora. Several formal and informal meetings have been held with individuals as well as women's

groups. In 2006, to ensure proper coordination and broadbased participation by women in the TRC process, and to guarantee that woman's concerns are adequately expressed and addressed, the TRC established a gender committee comprising a wide spectrum of civil society and international partners. Members of this committee included the Women NGO Secretariat of Liberia; the Ministry of Gender; the Open Society Initiative for West Africa (OSIWA); ICTJ; the United Nations Development Fund for Women (UNIFEM); UNMIL Gender Section; Rule of Law Section and Human Rights and Protection Section; Liberia Crusaders for Peace Women's Wing; Traditional Women Association of Liberia; Women on the Move; and the Liberian Media Women Association.

Reference 41 - 0.03% Coverage

In 2007, the TRC established an Inquiry Unit, inclusive of a Director and ten inquiry officers, to investigate and corroborate allegations for egregious domestic crimes, gross violations of human rights and serious humanitarian law violations emanating from statement-taking and other sources. The scope of its work included, for example, an inquiry into window cases such as the Lutheran Church, Carter Camp, Sinji, and Bakadu massacres, among others. The Inquiry Unit was also tasked with investigating what role, if any, non-state, state and international actors had in the commission of domestic and international crimes including economic crimes.

Reference 42 - 0.10% Coverage

depends on the news media's capacity to provide reliable information through professional and unbiased journalism. Numerous prominent local and international journalists and media experts testified at the hearings held in Monrovia. The thematic hearings on the media sort to examine the overall role of the media spanning the timeframe of the TRC mandate. It focused on how the media reported on the conflict regarding content, level of coverage, ethical issues underpinning media coverage of the conflict, challenges confronting the media during the period under review, how these impacted the conflict generally, and lessons learnt. It also solicited individual and institution's perspectives on the TRC mandate provisions regarding reparation, amnesty and prosecution. The hearing was structured to reflect the various Eras, highlighting window cases in tune with the TRC's timeframe and investigative periods as follows; under the first era 1979 to 1984, attention was paid to the rice riot, of 1979, the military coup of 1980 and subsequent execution of 13 government officials, the 1984 raid on the campus of the University of Liberia campus etc., Second era, from 1984 to 1989, focused on the Thomas Quiwonkpa invasion, the Nimba raid, the murder of TV Anchor, Charles Gbeyon, the arrest and detention of several journalists and the opposition including politicians, students activists; the third era from 1989 to 1997, the rebellion launched by the NPFL of former President Charles Taylor, the intervention of the West African-Sub-region through ECOMOG, the role of the Armed Forces of Liberia as a combatant group, the emergence of numerous warring factions, the origin of peace conferences, the link to the war in Sierra Leone and the elections of Charles Taylor as President of Liberia, the Fourth era from 1997 to 2003; human rights and international humanitarian laws violations by the Taylor government and the international community's response to these violations by imposing sanctions, the emergence of two new warring factions (LURD and MODEL), the exile of Taylor to Nigeria, the Accra Comprehensive Peace Accord which subsequently saw the creation of the TRC etc.

Reference 43 - 0.06% Coverage

It was this structure that the TRC established relationship with to assist the Commission in its work in rural Liberia and advise the commission in appropriate approaches needed to involve local inhabitants in the

TRC process. Upon the establishment of the TRC Traditional Advisory Council, council members received training through workshops on the TRC, mandate, and processes of the TRC. Substantial outreach was done with the traditional elders and people. The gender program of the TRC specifically designed and targeted outreach and sensitization about the TRC to female traditional leaders (Zoes) of the Sande Society who in turn educated their communities about the importance of participating in the TRC process. The Commission also considered traditional methods of conflict resolution, peace building and justice in preparedness for addressing reports of human rights violations emanating from its investigations in traditional context and affecting local communities. During thematic hearings in the counties, in addition to giving personal accounts of their experiences during the conflict, traditional elders lead their communities in making group presentations on how the war affected their people and advanced recommendations to the TRC for appropriate redress. On the overall, traditional stakeholders involvement in the TRC was greatly encouraged and yielded much benefit for the work of the Commission.

Reference 44 - 0.02% Coverage

Between 1979 and 2003, Liberia has suffered coups, state breakdown, deadly internal armed conflict and international neglect. Every conceivable category of gross human rights and serious humanitarian law violation has been committed by Liberians against Liberians. For over twenty-six years 1979-2005), Liberians have been forced to live under militaristic, autocratic and corrupt regimes that have not only deprived Liberians from maximizing their human potential but also systematically prevented Liberia from sustainably developing.

Reference 45 - 0.01% Coverage

d) A Legacy of Human Rights Abuse, Instability and Underdevelopment

Reference 46 - 0.01% Coverage

The Commissioners of the Liberian TRC determine that some persons are responsible for committing 'egregious' domestic crimes, 'gross' violations of human rights and 'serious' humanitarian law violations

Reference 47 - 0.04% Coverage

The Commissioners of the Liberian TRC determine that the following armed groups, rebel groups or warring factions and the financiers, leaders, commanders, combatants and advisors etc. associated with them are responsible for committing 'egregious' domestic crimes, 'gross' violations of human rights and 'serious' humanitarian law violations including economic crime in Liberia between January 1979 and October 14, 2003. The TRC has divided these groups into the following two categories; however, their culpability is the same: (1) Significant Violator Groups; and (2) Less Significant Violator Groups. The distinction between them relates to the number of reported violations against them. The specific crimes and total reported violations committed by these armed groups, rebel groups or warring factions and the financiers, leaders, commanders, combatants and advisors etc. associated with them will be detailed in the Final Consolidated Report (Volume II). The Commissioners of the TRC

Reference 48 - 0.02% Coverage

1. The Commissioners of the TRC determine that a criminal court with the competence and jurisdiction to adjudicate criminal responsibility for individuals, armed groups and other entities that the TRC determines

were responsible for 'egregious' domestic crimes, 'gross' violations of human rights and 'serious' humanitarian law violations is appropriate. Such institution shall be specifically endowed with the authority and jurisdiction to adjudicate domestic, IHRL and IHL violations.

Reference 49 - 0.03% Coverage

1. The Commissioners of the TRC determine that the establishment of a National Palava Hut Forum under the aegis of the Independent Human Rights Commission is a useful tool for peace building, healing and national reconciliation at both the national and district levels. Commission to organize and administer national 'Palava Hut' Committees in all of Liberia's sixty-four districts in order to provide victims a public venue to confront perpetrators living in their communities to hasten reintegration and reconciliation and community-based atonement. The TRC will submit a comprehensive recommendation on the competence, jurisdiction, structure, function and other authority of the National 'Palava Hut Forum to the National Legislature in the Final Consolidated Report (Volume II).

Reference 50 - 0.01% Coverage

1. The Commissioners of the TRC reserve the right to make recommendations of amnesty for children and persons, groups or entities that it has determined not to have committed 'gross' violations of human rights or 'serious' humanitarian law violations.

Reference 51 - 0.01% Coverage

activities contributed to gross human rights and / or humanitarian law violations in Liberia or that otherwise perpetuated armed conflict in Liberia, as well as those who benefited economically from armed conflict in Liberia.

Reference 52 - 0.04% Coverage

'Gross' Human Rights Violations Definitions

While the definitions in Annex 1 are largely, but not exclusively, taken from the Rome Statute of the International Criminal Court (ICC), their substance is derived from conventional and customary IHRL and international refugee law (IRL) that predates the ICC. When such crimes are committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group, they amount to genocide; and when committed as part of widespread or systematic attack directed against a civilian population with knowledge of the attack, they amount to crimes against humanity. It must again be stressed that while human rights obligations generally apply to state actors, select GHRV including, for example, enslavement, genocide and crimes against humanity which sit atop the hierarchy of IHRL and IHL increasingly extend to private persons and to private action.

Reference 53 - 0.01% Coverage

‚Gross‘ Human Rights Violations

Reference 54 - 0.01% Coverage

3.4.1 ,Egregious' Domestic Crimes (EDC) <<<<<<<<<<< 3.4.2 ,Gross' Human Rights Violations (GHRV) <<<<<<<<<<.

Reference 55 - 0.02% Coverage

7.1 Taylor's Uprising, Human Rights Violations (1990-1997) <<<<<<< 119 7.1.1
First Peace conference amidst worsening Human Rights & Humanitarian Crisis <<<<<<<<<<<<<<<
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Warring Factions <<<<<<<. Securing Peace: 16 Agreements Brokered and Broken <<<<<... 7.1.5
Taylor's Deadly Surge for Power: Operation Octopus <<<<<<...

Reference 56 - 0.03% Coverage

[illegible]

Reference 57 - 0.01% Coverage

10.2. Nature, Pattern and Character of Human Rights violations <<<<<. 10.3. Women, the TRC and the Conflict <<<<<<<<<<<<<. 10.4. Children <<<<<<<<<<<<<<<<<<<<<<< 10.5. Socio-Cultural and Economic dimensions of the conflict <<<<<<..

Reference 58 - 0.01% Coverage

18.7. Recommendations Related to the Establishment and Resourcing of the Independent National Human Rights Commission (INHRC) <<<<<< 280

Reference 59 - 0.01% Coverage

Annex 3. Complete Listing of persons recommended for prosecution for gross Human rights violations and war crimes. 332

Reference 60 - 0.01% Coverage

Economic Community of West African States ,Egregious' Domestic Crimes ,Gross Human Rights Violations'
Inter-American Commission on Human Rights International Criminal Court

Reference 61 - 0.01% Coverage

International Human Rights Law
Independent National Commission on Human Rights Independent National Patriotic Front of Liberia
International Technical Advisory Committee

Reference 62 - 0.01% Coverage

Reference 63 - 0.03% Coverage

We are also grateful to the United Nations (UN) and in particular its subsidiary Agencies: UNDP, UNMIL, UNICEF, UNIFEM, UNESCO, United Nations Peace Building Fund whose potential funding and technical support enabled the TRC to achieve its mandate. Similarly, we extend appreciation to the International Center for Transitional Justice (ICTJ), Advocates for Human Rights, the Women Campaign International (WCI), Georgia Institute of Technology, Glencree Center for Reconciliation, Hoffeherm Foundation and the Carter Center, which provided critical technical and material support to the TRC during this process.

Reference 64 - 0.08% Coverage

The outcome in this report is the product of deliberate planning and engagement with all segments of our society centering on all 15 counties of Liberia and the Diaspora. Capturing over 22,000 written statements, several dozens of personal interviews and over 500 hundred live public testimonies of witnesses including actors, perpetrators, and direct victims; a national regional consultation with county stakeholders and a national conference on reconciliation and the way forward provided the Commission a national perspective of the conflict, its causes, trends, impacts and the vision and aspirations of the people of Liberia for a better future. The Commission incorporated desk research, media publications and human rights reports of very prominent international and local human rights institutions into its work. So guided and informed, the Commission is well poised to make this report and draw the conclusions and make the recommendations contained in this report which in four volumes documents the comprehensive work of the Commission.

We extend appreciation to all, locally and internationally, who supported and worked with the Commission to ensure it succeeds at its mandate. We mention the Government of Her Excellency, Ellen Johnson-Sirleaf, the National Legislature including the House Standing committee on Peace and Reconciliation, The International Contact Group on Liberia (ICGL), Minnesota Advocates for Human Rights and the hundreds of volunteers across the USA, the media and dozens of civil society institutions, who were very interested and supportive of the process and lastly but not the least, the people of Liberia everywhere, not only for their support but most importantly for their abiding faith and confidence in the process and our ability to successfully navigate and pilot suavely through the many turbulences we encountered along the way.

Reference 65 - 0.01% Coverage

"This leaves the excruciating problem of "...human rights violations and other violent crimes which have caused so many victims and so much suffering in the

Reference 66 - 0.01% Coverage

1. Document and investigate the massive wave of human rights violations that occurred in Liberia during the period January 1979 – October 2003;

Reference 67 - 0.01% Coverage

Investigate economic crimes and other forms of human rights violations and determine whether these violations were part of a systematic and deliberate pattern of violations or isolated events of violations;

Reference 68 - 0.01% Coverage

systematic human rights abuses were attributes of the Monrovia hegemony of a few families that controlled the wealth of the nation.

Reference 69 - 0.01% Coverage

All factions to the Liberian conflict committed, and are responsible for the commission of egregious domestic law violations, and violations of international criminal law, international human rights law and international humanitarian law, including war crimes violations.

Reference 70 - 0.01% Coverage

6. No faction in particular instituted – in some cases to a very limited extentadequate mechanism to avoid or mitigate massive violations of human rights that characterized the conflict.

Reference 71 - 0.03% Coverage

15. General Human Rights Violations (GHRV) are generally, but not exclusively, committed by state actors, and may take place during times of peace or armed conflict, and can be directed against individuals or a group of individuals.

16. Lack of human rights culture and education, depravation and over a century of state suppression and insensitivity, and wealth acclamation by a privileged few created a debased conscience for massive rights violations during the conflict thus engendering a culture of violence as a means to an end; with an entrenched culture of impunity.

Reference 72 - 0.01% Coverage

All warring factions are responsible for the commission of gross human rights violations in Liberia, including war crimes, crimes against humanity, IHRL, IHL, ICL, domestic criminal laws.

Reference 73 - 0.02% Coverage

5. Reparation is a responsibility of the state and development partners as a long term peace investment to redress the gross violations of human rights committed against victim communities and individuals, especially women and children, to help restore their human dignity, foster healing and closure, as well as justice, and genuine reconciliation.

Reference 74 - 0.01% Coverage

8. Reform of public institutions and certain policies will promote peace, security, national reconciliation, good governance and human rights; reduce poverty and alleviate illiteracy, create opportunities for all, as well as to guarantee that, the experiences and horror of the conflict will not be repeated.

Reference 75 - 0.02% Coverage

The TRC determines that the following armed groups, rebel groups or warring factions and their financiers, leaders, commanders, combatants and advisors etc. associated with them, are responsible for committing 'egregious' domestic crimes, 'gross' violations of human rights and 'serious' humanitarian law violations including economic crime in Liberia between January 1979 and October 14, 2003.

Reference 76 - 0.01% Coverage

Recommendations to the Government also include the full range of mandated recommendations of the TRC Act; to include reparations, justice and reconciliation mechanisms, institutional reforms, governance, issues of the Diaspora, national integrity and corruption, the national human rights commission, etc

Reference 77 - 0.01% Coverage

The TRC is also recommending to the international community to reconsider peacekeeping objectives and the modus operandi for negotiating peace agreements, which will assign high premium to human rights, public integrity and increased investment in conflict prevention over conflict resolution.

Reference 78 - 0.03% Coverage

Confronted with numerous challenges, Liberia had to grapple with the challenges of human rights abuses emerging from its immediate past. The 2003 Comprehensive Peace Agreement mandated the creation of a national Truth and Reconciliation Commission (TRC), which was passed into law by the National Transitional Legislative Assembly in June 2005. President Johnson-Sirleaf inaugurated the nine member Commission in February 2006, and formally launched the active phase of its two-year mandate at a public ceremony in Monrovia at the Centennial Memorial Pavilion on June 22, 2006.

Reference 79 - 0.05% Coverage

Cllr. Jerome Verdier, Chairman of the TRC, was a leading human rights and civil society activist prior to his selection to serve on the TRC. He holds a Bachelor of Business Administration degree in Accounting and Economics from the University of Liberia (1988) and a Bachelor of Laws degree (LLB) from its Louis Arthur Grimes School of Law (1998). Apart from working both in the private and public sectors as a Senior Accountant, Comptroller and Executive Director, he has been instrumental in strengthening civil society advocacy, while serving in several capacities as Executive Director of Liberia Democracy Watch; Chairman of the Board of Directors of The National Human Rights Center of Liberia; a consortium of nine human rights and pro-democracy organizations; Board Chairperson of the Foundation For International Dignity; Senior Staff Attorney for the Association of Environmental Lawyers (Green Advocates); and the first Research & Program Officer of the Catholic Justice & Peace Commission. Cllr. Verdier is a practicing attorney, credited for rendering pro bono legal services to indigent persons, civil society activists, and

Reference 80 - 0.09% Coverage

earning a JD degree from Quinnipiac. She holds Bachelor of Arts degree in Political Science from the University of Liberia (1973). She is a legal drafter with more than a quarter century of experience in the peace building, woman and human Rights Advocacy and a renown Liberian Politician. Commissioner Bull has held many elected and presidential appointed positions, serving in the public and private sectors in Liberia including on several Boards; Red Cross, YMCA, Renaissance Corporation Inc. FORUM, Special Assistant to Mrs. Angie Brooks Randolph 1974, Law clerk to Supreme Court of Liberia under Associate

Justice, George E. Henries, 1978-1979, Country Vice President, International Federation of Female Lawyers, elected National Chairman, Women Wing, True Whig Party of Liberia, January 1980-April 12 1980, Elected Member from Montserrado County to the Constitutional Advisory Assembly of Liberia (1983) (see 1986 Constitution), Member of the Interim National Assembly of Liberia, representing Montserrado County (1984), Member of the Public Procurement Steering Committee to draft the Act Creating the Public Procurement and Concession Commission of Liberia (2004-2005), elected chairman of the Civil Society committee to lobby the national Transitional Legislature for the enactment of An Act to Repeal the 1979 Act Creating the Liberian Commission of Human Rights and to Create the Independent National Committee on Human Rights of Liberia, to ensure said act was printed into Handbill (2005), Vice Chairman, Independent Committee of Expert for the selection of commissioners for the Independent National Human Rights Commission of Liberia (Dec. 2005), Acting National Chairman Women Wing Unity Party of Liberia, 2005, Coordinator for the Movement for the Promotion of Ellen Johnson-Sirleaf for President of Liberia (MOPED) (2005-2006), Member of the National Bar Association of Liberia for 27 years, and Association of Female Lawyers where she served on several Committees.

Reference 81 - 0.02% Coverage

Commissioner Bull has received several national and International Honors and Recognition including "Who is in the world " 1987 ed. Philip Jessup Moot Court competition Washington D.C., Female lawyer of the year (Liberia) 2007- 2008, Woman of the Year 2008 (Liberia), Liberia Human Rights chapter (1994), TRC Representative on the 2006 Presidential Commission to Investigate the Nimba Land dispute.

Reference 82 - 0.04% Coverage

Commissioner John H.T. Stewart is a Liberian journalist, human rights advocate and activist. He is well known for his acerbic writing and interviewing style and has served as Associate Editor of the New Democrat Weekly and presenter of the Radio Veritas Topical Issues program. He was educated at the University of Liberia and has held numerous professional positions including local consultant for the Media Foundation for West Africa; reporter for Channel Africa; Regional Coordinator for the Catholic Justice and Peace Commission; Information Assistant for the United Nations Population Fund; and National Assistant Field Security Advisor to the United Nations Development Program. Commissioner Stewart's advocacy efforts have included working with the Citizens of Liberia against Gambling, Citizens of Liberia in Defense of Albert Porte and the Movement for Justice in Africa. An advocate for the past thirty years, he has been imprisoned and tortured for his activism.

Reference 83 - 0.03% Coverage

Dr. Jeremy I. Levitt is the sole member of the International Technical Advisory Committee (ITAC) of the TRC. Article V Section 10 of the TRC Act mandates that ITAC advisors are entitled to the same ,full rights and privileges as Commissioners, except that advisors shall not vote during meetings.' The TRC Act requires ITAC advisors to ,work directly with Commissioners in the fulfillment of their mandate.' In accordance with Section 10, Professor Levitt was nominated by the United Nations High Commissioner for Human Rights at the beginning of 2008, and appointed by Her Excellency President Johnson-Sirleaf on 31 July 2008.

Reference 84 - 0.02% Coverage

Dr. Kenneth Agyemang Attafouah, Phd, ITAC Member (Ghana) was also a member of ITAC. A Criminologist, Sociologist and Barrister-at-Law and Solicitor of the Supreme Court of Ghana, Dr. Attafouah was nominated to the TRC by the United Nation's High Commissioner for Human Rights. He is a former Commissioner of Human Rights in the Province of British Columbia, Canada, where he adjudicated human rights complaints, and a Member of the Canadian

Reference 85 - 0.08% Coverage

Immigration and Refugee Board, where he adjudicated claims to convention refugee status in Canada. He was the Executive Secretary of Ghana's National Reconciliation Commission. He previously worked as Chief Investigator and Director of Public Education and Anti-Corruption at Ghana's Commission on Human Rights and Administrative Justice. He is a former Adjunct Professor of Criminology at the prestigious School of Criminology at Simon Fraser University (SFU) in Vancouver, B.C., Canada, from where he earned his Ph.D. in 1994. Dr. Attafouah is also a product of the Ghana School of Law (B.L), the University of Manitoba in Winnipeg, Canada, (M.A., Sociology) and the University of Ghana (B.A. (Hons.), Sociology with Political Science.

Prior to his appointment to the TRC of Liberia, Prof. Cllr. Ken Attafouah was an Associate Professor of Governance and Leadership at the Graduate School of Leadership and Public Management at the Ghana Institute of Management and Public Administration (GIMPA). He is the recipient of the Rev. Dr. Martin Luther King, Jr. Memorial Award for outstanding contributions to race relations in Canada (February 1992), and of the much-coveted Vancouver Multicultural Society's Distinguished Public Service Award for outstanding contributions to, and dedicated service in, the promotion of human rights education and multiculturalism in British Columbia, Canada (November 1995). Dr. Attafouah's extensive publications record includes a number of decisions that set precedents in human rights in Canada. He has trained and consulted widely, both locally and internationally, in the fields of human rights, adjudication, investigations, conflict resolution, crime, policing, crime prevention, criminal law reform, justice and the rule of law, gender mainstreaming, leadership and governance, corruption and conflict

Reference 86 - 0.03% Coverage

Article V Section 10 of the TRC Act provides for three ITAC members to be nominated, one by the United Nations High Commissioner for Human Rights (UNHCHR) and two by the Economic Community of West African States (ECOWAS). Due to a number of constraints, three different ITAC advisors were appointed in 2006, but thereafter resigned. In September 2008, one was again nominated by the UNHCHR and appointed by the President of the Republic of Liberia in July 2008. ITAC advisors provide legal and policy oversight and advice to TRC Commissioners and are accorded all rights and privileges as Commissioners, except the right to vote.

Reference 87 - 0.06% Coverage

TRC commissioned The Benetech Human Rights Program for assistance in developing a data collection and analysis process in order to address key questions about human rights violations and the nature of the conflict in Liberia. For over fifteen years, members of the Benetech Human Rights Program have worked with eight other truth commissions to incorporate information technology and scientific methods to support their truth-seeking mandates. Specifically, Benetech work with the Commission has involved establishing analytical objectives, collecting data, designing and implementing an information management system, conducting statistical analysis, integrating quantitative findings and follow-up support. Benetech advised the TRC on methods for large-scale data collection and quantitative analysis of

statements and other data about human rights violations. Benetech provided training and support to help the TRC develop the capacity to undertake the necessary steps to accurately and defensibly represent quantify information about human rights violations documented in Liberia. Benetech worked with the TRC to implement a complex human rights information management system consistent with the specific needs of the TRC and its dynamic process.

Reference 88 - 0.02% Coverage

The mandate of the Truth and Reconciliation Commission of Liberia (TRC) is expansive and complex. It is charged with the onerous task of promoting national peace, security, unity and reconciliation by, among other things, investigating, identifying the antecedents of, and determining responsibility for ,egregious' domestic crimes (EDC), ,gross' human rights violations (GHRV) and ,serious' humanitarian law violations (SHLV). Article IV Section 4 of the Act to Establish the Truth and Reconciliation Commission (TRC Act) of 12 May 2005, states:

Reference 89 - 0.03% Coverage

Investigating gross human rights violations and violations of international humanitarian law as well as abuses that occurred, including massacres, sexual violations, murder, extra-judicial killings and economic crimes, such as the exploitation of natural or public resources to perpetuate armed conflicts, during the period January 1979 to 14 October 2003; determining whether these were isolated incidents or part of a systematic pattern; establishing the antecedents, circumstances, factors, and context of such violation and abuses; and determining those responsible for the commission of the violations and abuses and their motives as well as their impact on victims.

Reference 90 - 0.01% Coverage

Providing a forum that will address issues of impunity, as well as an opportunity for both victims and perpetrators of human rights violations to share their experiences in order to create a clear picture of the past to facilitate genuine healing and reconciliation;

Reference 91 - 0.02% Coverage

e. Adopting specific mechanisms and procedures to address the experiences of women, children and vulnerable groups, paying particular attention to gender based violations, as well as to the issue of child soldiers, providing opportunities for them to relate their experiences, addressing concerns and recommending measures to be taken for the rehabilitation of victims of human rights violations in the spirit of national reconciliation and healing.

Reference 92 - 0.05% Coverage

Due to its broad mandate, the TRC was immediately confronted with the difficult task of assessing which bodies of IHRL and IHL applied to it—a critical question given that the mandate includes making determinations on those responsible for committing EDC, GHRV and SHLV. The TRC Act broadly defines ,Human Rights violations' as: ,(1) violations of international human rights standards, including, but not limited, to acts of torture, killing, abduction and severe ill-treatment of any person; (2) violations of international humanitarian law, including, but not limited to crimes against humanity and war crimes.' It further states that ,violations of international humanitarian law' includes the Geneva Conventions of 12

August 1949 and its Additional Protocols.' Based on the legal mandate of the TRC as enumerated in Section 4(a), the TRC adopted a coherent set of categories of crimes, standards and definitions to guide and inform its work. The process involved determining the applicability of IHRL and IHL on Liberia between January 1979 through 14 October

Reference 93 - 0.09% Coverage

As an independent body created under and by Liberian law, the TRC must operate in accordance with international law binding on the Republic of Liberia. Despite the fact that the TRC Act provided broad legal guidelines to steer the TRC's legal mandate to investigate and ,determine those responsible for the commission of the violations and abuses,' it did not offer insight into the multifarious existing rules and standards that bind, regulate and define the scope of the TRC's quasiadjudicatory function. Consequently, the TRC had to conduct a forensic legal audit of Liberia's obligations under Liberian penal law, African Union law, ECOWAS law; UN law; general international law, and customary international law to fashion its own legal architecture and standards. This process required canvassing over fifty human rights, humanitarian and other-related treaties, ascertaining the precise status of regional and customary international law norms applicable to Liberia, as well as examining the jurisprudence and practice of the various international and ad hoc criminal tribunals, and truth and reconciliation commissions, respectively. This endeavor was further complicated by the unique temporal mandate of the TRC (from January 1979 to October 2003), which, for example, begins during the Cold War era and continues through the immediate post-Cold War period into the twenty-first century. During this twenty-four year period, regional and international law significantly evolved, requiring nuanced analysis and legalistic filtering. For example, prior to the end of the Cold War, there was no comprehensive international protective regime for children; however, since 1990, the African Charter on the Rights and Welfare of the Child (1992), Convention on the Rights of the Child (CRC) (1989), and the Optional Protocol to the CRC on the involvement of children in armed conflict (2004) have been crystallized into hard law; along with complementary customary international law. Consequently, in 1979, despite the contested applicability of IHL to internal armed conflict, governments and non-state

Reference 94 - 0.06% Coverage

Although IHRL and IHL are complementary and strive to protect the lives, health and dignity of people, they are distinct. IHL applies in situations of armed conflict, while IHRL applies at all times, in situations of armed conflict and peace. IHRL is generally limited in application to violations committed by a state or its agents against citizens, whereas IHL is applicable to state actors and non-state actors alike. In the search to criminalize violations of IHRL and IHL, a new branch of international penal law referred to as international criminal law (ICL) has emerged. After a review of relevant and prevailing regional and international law and standards, and in accordance with its mandate, the TRC concluded that while in times of public emergency some human rights treaties permit governments to derogate from certain rights, it is never acceptable to derogate from fundamental human rights (e.g. right to life and personal dignity). It also determined that no derogations are permitted under IHL because it was established to regulate emergency situations, and particularly armed conflict; rules governing the conduct of hostilities and Prisoner of War (POW) status are not applicable in noninternational armed conflicts; and there is no derogation from ICL in times of public emergency because it exists to protect the fundamental rights of people through penal sanction.

Reference 95 - 0.04% Coverage

IHL gives little guidance on how to determine when an armed conflict actually begins and, for this reason, when IHL is applicable to non-international armed conflict. This is a critical issue because, as already noted, situations of internal armed violence short of armed conflict only engender IHRL and ICL; whereas, situations of armed conflict are characterized by IHRL, IHL and ICL. With respect to IHL, the Geneva Conventions of 1948 (I-IV) and Protocol II Additional to the Geneva Conventions of 1977 (Protocol II) provide different standards for determining when armed conflict exists and consequently when the conventions apply. According to the Inter-American Commission on Human Rights (IACHR) in the Abella case, which is one of few authoritative interpretations identifying when Common Article 3 is

Reference 96 - 0.03% Coverage

As already noted, the TRC adopted three primary classifications of crimes that it is using to investigate and determine responsibility including: (1) 'Egregious Domestic Crimes'; (2) Gross Human Rights Violations; and (3) Serious Humanitarian Law Violations. The TRC reserves the right to and will make determinations of criminal responsibility on any persons, groups or entities involved in a joint criminal enterprise or conspiracy, including those who planned, instigated, ordered, committed, aided or abetted in the planning, preparation or execution of any crime within its mandate. The sections that follow will discuss and define these terms in

Reference 97 - 0.05% Coverage

While the TRC mandate is preoccupied with IHRL and IHL violations, it also provides the necessary flexibility to consider other 'abuses' or crimes that are not of an international character but fall into the realm of domestic criminal law including sexual violations (e.g. rape and molestation) and murder. Clearly, massacres, economic crimes and extra-judicial killings fall within the ambit of IHRL and IHL; however, to the extent that the Liberian penal law addresses these or related egregious crimes (particularly those classified as first degree felonies), TRC Commissioners decided that they would comprise a part of the legal standards used to make determinations on responsibility. This approach provides the TRC with needed flexibility because during times of peace—when only human rights law is applicable—it may investigate and adjudicate responsibility for violations committed by private citizens for private actions under domestic law, not simply crimes committed by the state against private citizens. Hence, to the extent that Liberian law criminalizes sexual crimes, murder and massacres, the TRC will use it to determine those responsible for committing such acts.

Reference 98 - 0.02% Coverage

3.4.2. "Gross" Human Rights Violations (GHRV)

The human rights protective regime is designed to protect individuals and groups of people from abuses of state authority. The TRC Act is almost exclusively concerned with gross violations of civil and political rights as opposed to economic, social and cultural rights, except for its explicit reference to economic crimes. By definition, the Statute also unambiguously distinguishes between GHRV and milder types of violations enumerated in, for example, the International Covenant on Civil and

Reference 99 - 0.03% Coverage

The TRC has determined that GHRV are generally but not exclusively committed by state actors, may take place during times of peace or armed conflict, and can be directed against individuals or groups. GHRV abrogate preemptory norms of international human rights law such as: (1) Murder; (2) Extermination; (3)

Enslavement; (4) Torture; (5) Rape; (6) Sexual Slavery; (7) Enforced Prostitution; (8) Enforced Sterilization; (9) Sexual Violence; (10) Enforced Disappearance of Persons; (11) Persecution; (12) Deportation or Forcible Transfer of Population; (13) Imprisonment or other Serious Deprivation of Physical Liberty; (14) Genocide; and (15) Crimes Against Humanity. Articles II and IV of the TRC Act encompass the aforementioned GHRV. For a list of definitions, please see Annex 3.

Reference 100 - 0.03% Coverage

In determining procedures the Commission would employ in performing its functions, Article VII, Section 26 (a) stipulates that the TRC should facilitate and, where necessary, initiate or coordinate enquiries into, and investigate ,*g+ross violations and abuses of human rights, privileges, powers and authority in Liberia including violations, which were part of a systematic pattern of abuse' as well as the ,nature, causes and extent of gross violations and abuses of human rights, including the root causes, circumstances, factors, context, motives and perspectives which led to such violations.'

Reference 101 - 0.05% Coverage

Data collection of the process was both qualitative and quantitative. For qualitative information, the Commission received information through the following means: statement-taking (the statement-taking forms had sections for both qualitative and quantitative information), Inquiry Unit interviews, public and In-camera hearings and testimonies, documented submissions, UN Country reports and assessments, reports of local and international human rights organizations, reports of Liberian civil society organizations, US State Department human right reports, media reports, publications, books and declassified documents of the US State Department, CIA pursuant to Freedom of Information Act (FOIA) request made for the benefit of the TRC by two American private institutions, National Security Archives and The Kennedy Foundation. Some of these sources were confidential as well as nonconfidential. For quantitative information, the TRC relied heavily on data and analysis from Beneficial Technology or Benetech, a U.S. based corporation contracted to manage the TRC database; a critical component of its work.

Reference 102 - 0.06% Coverage

Following a public vetting and recruitment process in late 2005, TRC Commissioners were selected by then transitional Head of State, Gyude Bryant and afterward received their commissions from Her Excellency President Ellen Johnson-Sirleaf on 20 February 2006. Immediately thereafter, Commissioners underwent various types of training and courses in the history and origin of truth commissions as a form of transitional justice mechanisms, including their functions, goals, objectives and importance in post conflict countries; best practices approach and experiences of other truth commissions, and human rights and humanitarian law training. Commissioners also received training in the investigation of human rights violations; technical issues in conducting public and in-camera hearings; psychosocial care and support for victims, and others coming before the TRC; conflict prevention and resolution; reparations; and other specialized topics of interest that enabled Commissioners to function within the accepted operational standards of truth commissions.

The training was facilitated by a combination of local and international experts in the field of international law and transitional justice. An array of institutions including the Economic Community of West African States (ECOWAS), Human Rights Foundation of South Africa (HRCSA), the International Center for Transitional

Reference 103 - 0.04% Coverage

In June 2006, prior to the launching of the TRC, the nine member Commission visited South Africa under the auspices of the Human Rights Foundation (FHR) to undertake a study tour of South Africa for orientation and to become acquainted with the country's past truth and reconciliation process in order to experience firsthand, how the South African TRC approached and managed its process. The training was well coordinated and intensive, and afforded the Commissioners the rare opportunity to meet and speak one-on-one with former South African Commissioners, staff, human rights advocates, government officials, and renowned South Africans and others on the impact of the TRC in South Africa. The training assisted Commissioners in expanding their knowledge about the practice of truth and reconciliation commissions, and provided them with a clearer understanding of what they would be encountering. Additional training continued on an ongoing basis throughout the process.

Reference 104 - 0.04% Coverage

In recognition of the important role staff would play in effectuating the TRC's mandate, the Commission, with the assistance of several partners, conducted research, writing, analysis, investigative techniques and management skills training for domestic TRC staff. Staff often participated in training alongside Commissioners, while at other times they were trained independently. For example, in 2006, over three hundred staff members were trained as statement-takers, investigators, psycho-social support persons and county coordinators in preparation for the statement-taking, inquiry and hearing processes, and the creation of TRC offices in Liberia's fifteen counties. Data entry staff or coders entrusted to input information into the database from the statement-taking were provided specialized training in this area coordinated by Benetech. The data coders were trained in 2007 in the mechanics of data coding, categorizing of human rights violations, geography of victims communities and name codification.

Reference 105 - 0.06% Coverage

In order to maintain a balanced perspective, a uniform training program was designed with slight modification to suit the particular needs of the TRC Diaspora Project. The Diaspora Project was implemented by the TRC Diaspora partners, the Advocates for Human Rights, formerly Minnesota Advocates for Human Rights based in Minnesota, U.S.A, and closely supervised and co-managed by the TRC. Training modules in the Diaspora were jointly designed and coordinated to mirror, as closely as possible, the Liberia program. The TRC created a Diaspora Committee to closely track and monitor the project. Commissioners made periodic visits to the USA and played a leadership role in several training modules on the TRC mandate, transitional justice, the history of Liberia and its various episodes of conflict, the Liberian Constitution, statement-taking and investigation, human rights law and multiculturalism. The Diaspora Project trained over six hundred volunteers to collect statements from Liberians in the USA. This model of training was replicated with competent modifications for the West African Diaspora Project. Ten Liberians residing in the Buduburam Liberian refugee camp in Ghana were trained as statement-takers to assist the TRC to collect statements from Liberians in Ghana. About ten Liberians resident in the Federal Republic of Nigeria were also trained for the TRC project.

Reference 106 - 0.04% Coverage

partners, the Advocates for Human Rights, which served as a primary implementer of the Project. The Diaspora project resulted in the collection of approximately 1,500 statements from alleged perpetrators and victims of Liberia's various episodes of state chaos and conflict. The project eventually conducted

activities in eleven U.S. cities, Europe and to Ghana, Nigeria, and Sierra Leone where a significant number of Liberian refugees in West Africa reside. Community Advisory Committees comprising credible Liberians were established in each city hosting a project. Numerous outreach events were organized in collaboration with the Advisory committees and often hosted by the various Liberian communities. This approach ensured Diaspora community involvement and support for the Project. Approximately 1000 statements were collected from Liberians in West Africa.

Reference 107 - 0.04% Coverage

In adhering to these requirements, the TRC has engaged in numerous activities with women in Liberia and in the Diaspora. Several formal and informal meetings have been held with individuals as well as women's groups. In 2006, to ensure proper coordination and broad-based participation by women in the TRC process, and to guarantee that woman's concerns are adequately expressed and addressed, the TRC established a gender committee comprising a wide spectrum of civil society and international partners. Members of this committee included the Women NGO Secretariat of Liberia; the Ministry of Gender; the Open Society Initiative for West Africa (OSIWA); ICTJ; the United Nations Development Fund for Women (UNIFEM); UNMIL Gender Section; Rule of Law Section and Human Rights and Protection Section; Liberia Crusaders for Peace Women's Wing; Traditional Women Association of Liberia; Women on the Move; and the Liberian Media Women Association.

Reference 108 - 0.03% Coverage

In 2007, the TRC established an Inquiry Unit, inclusive of a Director and ten inquiry officers, to investigate and corroborate allegations for egregious domestic crimes, gross violations of human rights and serious humanitarian law violations emanating from statement-taking and other sources. The scope of its work included, for example, an inquiry into window cases such as the Lutheran Church, Carter Camp, Sinji, and Bakadu massacres, among others. The Inquiry Unit was also tasked with investigating what role, if any, non-state, state and international actors had in the commission of domestic and international crimes including economic crimes.

Reference 109 - 0.06% Coverage

The hearings were structured to reflect the various Eras, highlighting window cases in tune with the TRC's timeframe and investigative periods as follows; under the first era 1979 to 1984, attention was paid to the rice riot, of 1979, the military coup of 1980 and subsequent execution of 13 government officials, the 1984 raid on the campus of the University of Liberia campus etc., Second era, from 1984 to 1989, focused on the Thomas Quiwonkpa invasion, the Nimba raid, the murder of TV Anchor, Charles Gbeyon, the arrest and detention of several journalists and the opposition including politicians, students activists; the third era from 1989 to 1997, the rebellion launched by the NPFL of former President Charles Taylor, the intervention of the West African-Sub-region through ECOMOG, the role of the Armed Forces of Liberia as a combatant group, the emergence of numerous warring factions, the origin of peace conferences, the link to the war in Sierra Leone and the elections of Charles Taylor as President of Liberia, the Fourth era from 1997 to 2003; human rights and international humanitarian laws violations by the Taylor government and the international community's response to these violations by imposing sanctions, the emergence of two new warring factions (LURD and MODEL), the exile of Taylor to Nigeria, the Accra Comprehensive Peace Accord which subsequently saw the creation of the TRC, etc.

Reference 110 - 0.06% Coverage

It was this structure that the TRC established relationship with in order to assist the Commission in its work in rural Liberia and advise the commission on appropriate approaches needed to involve local inhabitants in the TRC process. Upon the establishment of the TRC-Traditional Advisory Council, council members received training through workshops on the TRC, its mandate, and processes. Substantial outreach was done with the traditional elders and people. The gender program of the TRC specifically designed and targeted outreach and sensitization about the TRC to female traditional leaders (Zoes) of the Sande Society who in turn educated their communities about the importance of participating in the TRC process. The Commission also considered traditional methods of conflict resolution, peace building and justice in preparedness for addressing reports of human rights violations emanating from its investigations in the traditional context and violations affecting local communities. During thematic hearings in the counties, in addition to giving personal accounts of their experiences during the conflict, traditional elders lead their communities in making group presentations on how the war affected their people and advanced recommendations to the TRC for appropriate redress. On the overall, traditional stakeholders involvement in the TRC was greatly encouraged and yielded much benefit for the work of the Commission.

Reference 111 - 0.03% Coverage

The TRC determined early that it wished to engage Liberians living outside of Liberia, the 'Diaspora,' in the national truth-seeking process. While more than thirty countries have implemented some form of national truth seeking body, no similar body has systematically engaged a Diaspora population in all aspects of its work. The TRC approached The Advocates for Human Rights (known at the time as Minnesota Advocates for Human Rights) and proposed a partnership to achieve its goal of engaging the Liberian Diaspora, particularly the U.S.-based Diaspora, in its

Reference 112 - 0.05% Coverage

The TRC approached The Advocates because it sought an organization that would be perceived as trusted, transparent, and neutral within the Liberian Diaspora community. Moreover, the TRC was seeking an organization with established connections to the Liberian Diaspora. The Advocates was ideally situated to partner with the Liberian TRC to undertake the Diaspora Project for a number of reasons. The mission of The Advocates for Human Rights is to implement international human rights standards to promote civil society and reinforce the rule of law. The Advocates for Human Rights was founded in 1983 by a group of Minnesota lawyers who recognized the community's unique spirit of social justice as an opportunity to promote and protect human rights in the United States and around the world. The Advocates is a non-profit, volunteer-based organization that investigates and exposes human rights violations; represents immigrants and refugees in the community who are victims of human rights abuses; trains and assists groups that protect human rights; and works through education and advocacy locally, nationally, and internationally to engage the public, policy-makers and children about human rights and cultural understanding.

Reference 113 - 0.03% Coverage

As an organization, The Advocates has a longstanding commitment to the human rights of Liberians. Moreover, The Advocates began using human rights monitoring methods in 2002 to contribute to the success of transitional justice in post-conflict societies. This expansion of the organization's human rights work was premised on the belief that human rights monitors' investigations and published observations

would help to uphold the integrity of the transitional justice process and the belief that monitoring further supports the transitional justice process by bringing it to the attention of the international community.

Reference 114 - 0.02% Coverage

Benetech work with the Commission involved establishing analytical objectives, collecting data, designing and implementing an information management system for the benefit of the TRC. Benetech also conducted statistical analysis, integrated quantitative findings and follow-up support to the TRC in the implementation of its human rights mandate. Benetech advised the TRC on methods for large-scale data

Reference 115 - 0.02% Coverage

collection and quantitative analysis of statements and other data about human rights violations. Benetech provided training and support to help the TRC develop the capacity to undertake the necessary steps in order to accurately and defensibly quantify information about human rights violations. The task of Benetech was to work with the TRC to implement a complex human rights information management system comprising the following steps:

Reference 116 - 0.04% Coverage

Coding: Consistency in Meaning and Counting: As mentioned above, coding is the process by which the ,countable units" violations, victims and perpetrators are identified in statements and transcribed onto coding forms. This process enables the TRC to count violations by county, by year, etc., in order to analyze the nature and patterns of human rights violations reported to the TRC. For example, what distinguishes "rape" from "sexual abuse"? The two categories must be defined so clearly that the people doing the coding apply the definitions in a standard way. That is, the definition must be so clear that if the same narrative statement is assigned to all of the coding staff, they would classify it in precisely the same way. We refer to these definitions as the controlled vocabulary.

Reference 117 - 0.01% Coverage

Database: Representing the Complexity of Human Rights Violations: There is a considerable amount of complexity that must be managed when counting human rights victims and violations:

Reference 118 - 0.04% Coverage

The most effective way of managing the relationships between different interdependent pieces of information is with a relational database. Benetech developed Analyzer, a database tool based on the 'Who Did What to Whom?'; a model specifically designed to organize human rights data for statistical purposes. Analyzer facilitates managing the challenges involved in structuring and quantifying human rights data. Different projects need to analyze different variables according to the specific human rights context in which they work. Benetech worked closely with the TRC to identify and add custom data fields needed for the TRC's work. The TRC hired a Database Manager and an initial team of three Data Entry Clerks when the customized Analyzer database was installed in October 2007. Two additional Data Entry Clerks were hired in December 2007 and six in March 2008 in order to increase the speed of data entry as funding became available.

Reference 119 - 0.05% Coverage

It is important to note that the analysis presented here reflects the information as presented by statement givers. When documenting human rights situations, different statements may describe the same event. That is, the same killing may have been reported by multiple statement-givers. A review of violations reported to the TRC found that with the notable exceptions of a few widely known individuals such as Samuel K. Doe, there was no significant number of duplicated violations. Duplicates were not identified or systematically removed from the TRC's data. The data extracted from the database is reformatted to be read into R, a statistical tool used to generate the analysis, graphs and tables presented in the Benetech report. Benetech uses R in conjunction with LATEX, SWeave (LATEX plus R), make, and Subversion (version control software) in an infrastructure developed based on the Benetech Human Right Project (HRP) data processing principles of transparency, auditability, replicability and scalability.

Reference 120 - 0.07% Coverage

Tubman built upon what he inherited from Arthur Barclay and others in respect of traditional authoritative structures. Once he acquired full control of the TWP political machine after 1955, he proceeded to manipulate interethnic political cleavages, by eventually establishing himself as the supreme ,paramount chief.' Tubman was perhaps the last of the repatriate hegemonic leaders, coming to power when a post-war international order would force Liberia out of its isolation into a deeper relationship with its neighbors, with all of the implications that carried for a settler-dominated government's relationship to the country's indigenous majority. African decolonization and the Cold War, would in their combined impact, shine light on human rights issues in Liberia in ways that forced the Liberian people to confront their founding paradigm, the building of a ,little America' in Africa, and the corresponding marginalization of the indigenous majority. The trickle of Liberians going abroad largely for education, and the corresponding small numbers of foreigners that came into Liberia soon became a flood of sorts. Liberians educated abroad or coming under the influence of a flood of foreigners, particularly American Peace Corps volunteers and progressive missionaries opened the doors to the contestations for civil and political rights in a way that has yet to be fully documented. A History of the Episcopal Church in Liberia (1992) sheds some light on the missionary factor.

Reference 121 - 0.02% Coverage

He also consolidated his position by joining fraternities and powerful tribal societies like the Poro and became its grand master. He identified with the tribal masses by wearing traditional attire on special occasions and held executive councils at which disputes were settled between the Americo-Liberian administrators and tribal chiefs, among others. In one of his addresses, President Tubman discussed the human rights abuses that had been inflicted on the indigenous people by some leaders of the Liberian Government. He said:

Reference 122 - 0.02% Coverage

It is worthy to note that Captain Saydee Totaye of the Liberian Frontier Force who was responsible for their untimely demise was never prosecuted for his excessive use of use. This gave credence to the fact that the government of the day had no respect for human rights especially, if the person or persons concerned is a perceived enemy.

Reference 123 - 0.07% Coverage

President, the Executive Mansion, where President Tolbert was sleeping and shot him in the head; killing several others on their forward march to the President's bedroom. The soldiers, most of who were involved with the illicit diamond trade to supplement their meager incomes, were kinsmen, friends, and students of Marcus Garvey and/or relatives of the detained politicians. They had earlier participated in the April 14 riots and charged the Tolbert government with rampant corruption, and violation of human rights, nepotism and misuse of public offices. The Constitution was suspended, about 80 prisoners were mistreated, and a backlash against Americo-Liberians led to confiscation of their properties. Under the True Whig Party more than a century rule, personal wealth became the byproduct of involvement in politics and government rather than entrepreneurship. Those outside the True Whig oligarchy or not beholden to it were prevented from acquiring an independent source of economic influence. Large business firms were almost all foreign owned and therefore, depoliticized but expected and made contributions to the party and provided jobs for politically well connected Liberians. Liberian owned businesses were either small businesses run by those without political stature or larger enterprises owned but not operated by government or party officials that profited from government preferment. By the time of Tolbert's death and the overthrow of the TWP Oligarchy 60% of the GDP was controlled by 7% of the population; all of whom were Americo-Liberian families who had ruled Liberia for over a century.

Reference 124 - 0.05% Coverage

As the first non Americo-Liberian Head of State, Samuel Doe initially enjoyed great popular support. The summary public execution of 13 former members of the Tolbert administration on April 22, 1980, including Tolbert's Foreign Minister C Cecil Dennis who was denied asylum by the US, soon made it apparent, however, that the Doe regime could pose a great threat to human rights in Liberia. The new PRC Justice Minister Chea Cheapoo justified the executions saying 'we had to act as the people wanted it'. Yet early years of the Doe administration represents the height of US involvement in Liberia amounting to over US\$500 million. This raised speculation further that the US had backed Doe's coup because of Tolbert's nonaligned policies. The US position is that it was necessary to protect their assets and counter the spread of socialism. Liberia became the highest per capita aid recipient in sub-Saharan Africa and Doe the highest recipient ever, much more than that received by all previous Liberian government administrations combined.

Reference 125 - 0.05% Coverage

Issues of the politics of personalities (within MOJA and PAL) and of groups (clamoring ethnicities) soon became apparent with manifestations of cracks in the unity of the PRC itself. Elements of the political left were branded 'socialist' and purged off the government just as was some members of the PRC. The military began to articulate or live a revolution of entitlement. A new political elite emerged. Its culture of politics was hardly different from the regime it had brought down. Corruption, political intolerance and human rights violations marred the public image and standing of the regime. This situation induced a realignment of the Liberian political map as the jockeying for power ensued within and outside the military. Rumors of coups and counter coups abound. Doe's much feared and respected Defense Minister and close ally, Gray D Allison, threatened Doe's power base by his sheer popularity with the military. He was framed for plotting a coup against Doe and a police officer, Joe Lesolee, was coerced to provide false testimonies against Allison which would put him away forever at the notorious Belle Yallah maximum prison where he met his fate during the Taylor's uprising.

Reference 126 - 0.06% Coverage

The cacophonous encomiums that heralded Samuel Doe into the Executive Mansion in 1980 soon transformed into penchant discordant tunes. Opposition to the Doe-led 'democratically elected government' rapidly swelled as Doe became not only inclined towards pocketing State resources, but also literally went out on a rampage against perceived and real political opponents with vengeance. By 1988 the US was embarrassingly disenchanted with Doe's human rights records and corruption in his government. Evidence mounted that aid money was lost perpetually to corrupt officials in the Liberian government, so that aid was not getting to citizens for whom it was intended. Doe's Government did not cooperate with US accounting experts sent to assist and under the Brook's Amendment, aid to Liberia was suspended and resumed later but never up to pre-1985 levels.

Gross violations of human rights became the order of the day. Assassination of opponents became a choice tactic, while witch-hunting became a preferred method of engagement with those who did not, or were not thought to share Samuel Doe's rather abnegating vision of leadership. Samuel Doe chose to visit the inequities of Liberia's undeniably un-egalitarian past on all and sundry. Doe decided to remedy decades of neglect and exclusion by meting out dire reprisals to those who dared voice opposition to his government. He vengefully pursued the tribes of those who

Reference 127 - 0.01% Coverage

7.0. THE LIBERIAN CIVIL WAR – 1990 – 2003 7.1. Taylor's Uprising, Human Rights violations & War Crimes (1990-1997)

Reference 128 - 0.07% Coverage

At the same time, Doe's request and those of others interested in Liberia (like the Friends of Liberia – 'FOL') for the US to directly intervene was denied by the Bush Administration. A proposal which the US thought was the best for Liberia, for Doe to resign and go into exile in Togo and allow Charles Taylor to take power, was rejected by Doe. The White house did not endorse the plan. An earlier request from Doe to the US through emissaries including Winston Tubman, Emmanuel Bowier, etc to stop the war was rejected. The US no longer trusted Doe and would do nothing to stop the war. Its initial attempt at 'proximity talks' failed as both parties (Doe and Taylor's representatives) insisted on direct talks. The US later conditioned its involvement on four principles which Doe must comply with in 30 days to guarantee US actions to halt Taylor: a) that Doe calls early elections in which he will not be a candidate; b) Doe establish an independent human rights commission not amendable to Doe; c) Doe lift the ban on media and newspaper entities; and d) release all political prisoners. As a show of good faith the US will organize a peace meeting in Sierra Leone at the US Embassy- a 'neutral ground'. The delegation was advised that Doe was the most disliked leader in the world and at 40 years of age, he should take his money and leave Liberia otherwise 'in October 1990 you will look around and you will not find him'. Doe rejected the conditions on counsel of his krahn kinsmen.

Reference 129 - 0.08% Coverage

The stalemate deepened to the disadvantage of the civilian population which lived constantly under fear, threatened, brutalized and killed. The fighting forces clearly frustrated exacted their energies on the civil and armless population trapped in their controlled territories. A humanitarian and human rights disaster was in the making. The NPFL militias, mostly ill-trained and trigger happy, were part of a band of a force less inclined to respecting the values of human rights but more inclined to blaming every individual not a member of their fighting forces for their malady. The NPFL deployed not less than 180 'special forces' into its mission and each special forces deployed, had under his command a personal army of not less than

200 men who were unleashed on the civilian population. With limited supplies, they lived off the labor and sweat of civilians in an unequal relationship that saw the population massively victimized, killed and properties looted; entire villages and towns were burnt and other times abduction, and many times forcefully displaced. Massacres, rape, torture, children recruitment into their ranks were pervasive as ethnic cleansing and ethnic profiling was standardized at every one of the hundreds of check points the NPFL operated throughout its vast controlled territories. The NPFL, clearly was operating a massive force of hoodlum, vengeful Nimba citizens, victims who joined out of fear, insecurity and protection of family members; yet, there were those who took arms to ,settle old scores', loot and take advantage of a lawless institution to wield power, authority and acquire wealth. Anachronism of what became the NPFL was a cacophony in vain pursuit of power, with a single hierarchy in Charles G. Taylor who commanded his men to ,pay themselves'.

7.1.1 First Peace conference amidst worsening Human Rights & Humanitarian Crisis

Reference 130 - 0.03% Coverage

All these agreements, except the Accra CPA (2003), were lacking in accountability mechanisms which left one warring faction after another to continue committing mass murders and gross violations of human rights including violations of humanitarian and international human rights laws and war crimes, with impunity. In fact, the Cotonou Accord sought to grant general amnesty to all combatants. The CPA was the seventeenth peace agreement since the outbreak of war in 1989. Indeed, it was comprehensive, covering a broad range of issues, and perhaps even more detailed and lengthy than previous agreements. Each new faction tended to be more vicious and callous than the one before it or the one it was established to resist. Fear,

Reference 131 - 0.01% Coverage

m) Taylor sweep of the human rights community arresting journalist Hassan Bility ; human rights activist Aloysious Toe, Blamo Sieh and five others; and on April 24, 2002 human rights lawyer Tiawan Gongloe was arrested on spurious charges and severely beaten and tortured in prison; and

Reference 132 - 0.02% Coverage

actualization and low morale after years of abuse and a sense of inferiority, begging and prostitution become inconvenient realities; children begotten of these illicit relationships – ,rebel baby', ,ECOMOG children', ,OTC Children', ,bastards', ,orphans', ,child without back or front', were ostracized victims of stereotyping, stigma and a perfect target for recruitment into a marauding armed gang. A vicious cycle of debasement, violence, crime and human rights violations continued without notice, suspects or acknowledgement and accountability.

Reference 133 - 0.07% Coverage

Charles Gyude Bryant of the Liberia Action Party (LAP), by decision of the three warring factions, was selected from a short list of potentials including Ellen Johnson Sirleaf (obtained the highest votes of delegates) and Togba Nah Tipoteh, as Chairman of the LNTG on August 21, 2003, two days after the execution of the CPA. The US Marines withdrew on Liberia's Flag Day to warships off the Liberian Coast after eleven days on land, as an additional 650 ECOMIL forces deployed in Liberia. By September 11, 2003, ECOMIL troop level stood at approximately 3,500. On September 19, 2003, the UN Security Council unanimously approved a 15,000 peace keeping force – the largest in the world at the time - designated as

the UN Mission in Liberia (UNMIL). The first batch of UNMIL troops began deployment on October 1, 2003 as the ECOMIL troops were inducted into UNMIL. C. Gyude Bryant was inducted into office at a ceremony in Monrovia as head of the new Transitional Government of Liberia on October 14, 2003. The war ended in Liberia and a period for confronting post-conflict challenges of peace-building, reconstruction and reconciliation had begun. The TRC of Liberia was established by an Act of the Legislature in June (2005), to investigate human rights abuses during the period January 1979 to October 15, 2003 and ,provide a forum that will address issues of impunity, as well as an opportunity for both victims and perpetrators of human rights violations to share their experiences in order to get a clear picture of the past and to facilitate genuine healing and reconciliation'.

Reference 134 - 0.15% Coverage

Another attempt was made to solicit popular opinions on the process by the National Human Rights Center of Liberia (NHRCL) headed by Cllr. Jerome J Verdier, Sr. The NHRCL and other research authorities, along with CEDE, FIND, UNMIL Human Rights Section, and USAID, conducted county assessment research in five accessible counties – Montserrado, Bomi, Margibi, Grand Cape Mount and Bong – to determine the acceptance level of a TRC process. Town hall meetings were held and the people preferred a TRC process in the immediate term over a war crimes court or another transitional justice mechanism. Thereafter, a conference of Liberian stakeholders was convened at the Corina Hotel on April 29, 2004 by CEDE and the TJWG, with support from UNMIL and UNDP, to consolidate perspectives on the TRC process and draft a TRC Act, as a proposal to the Legislature. For three consecutive days, representatives from the counties, political parties, the TRC itself, civil society and other personalities of diverse political persuasions attended, including D. Museleng Cooper, Cllr. Laveli Kobo Johnson, immediate past Chief Justice, Gloria M Scott, of the erstwhile Taylor Government. The conference was chaired by Jerome J Verdier, Sr. and assisted by Atty. Alfred Brownell of Green Advocates as deputy. Two international experts, invited by UNMIL, Yasmin Suka of the South African TRC and Priscilla Heynar of ICTJ participated in the conference. Paul Allen James from the Sierra Leone TRC also participated. Three full days of deliberations and exchange of opinions ensued and for the next two weeks the process of legislation drafting, including research, comparative analysis, proposals, review and debate ensued, solely amongst Liberians who had assessed the historical background of the country and drafted an act accordingly. The TRC law was drafted to represent the aspirations of the Liberian people and thereby, captured the aspirations and drive for the accountability mechanism reflected in the act today.

On August 13, 2004 the draft Act was presented to Chairman Bryant at a closing ceremony and the document circulated locally and worldwide for peer review. The subsequent draft was presented to Chairman Bryant to same forwarded to the National Transitional Legislative Assembly (NTLA). Realizing that the passage of the new Act would effectively cure the deficiencies of the TRC he had established and dissolve it. Chairman Bryant was reluctant to send the bill forward to the NTLA and didn't do so until another bout of activism, led him to submit the draft bill in April 2005 for its first reading. At the NTLA itself, the bill did not get passed without opposition, which was noticeably loud. It took the expert testimonies of Priscilla Heyner of ICTJ, Human rights Expert Charlotte Abarka, UNMIL, Civil Society and numerous other individuals and organizations including, Hon. Comany Wesseh, himself a participant at the drafting conference and Head of the Legislative Committee on the scrupulous implementation of the CPA. He was resolute and undaunted in defense of the draft act and lobbied his colleagues to adopt all the expert testimonies and enact the bill. The Act Establishing the Truth and Reconciliation Commission of Liberia was enacted on June 9, 2005 and signed into

Reference 135 - 0.04% Coverage

mainstreaming, psychosocial support and witness protection, public hearings, and reports. A full range of activities included policy harmonization and training for commissioners and staff so as to ensure that the mandate of the TRC was scrupulously implemented within record time. Staff recruitment and setting up the secretariat was especially difficult considering that a tight time line was adopted, without any funding, and a rigid process to ensure that no one with known records or perception of human rights violations were hired consistent with its rules of procedures. Limited funding and material supplies, and resource inadequacies, constrained the work of the Commission throughout its mandated operational period. The initial work plan of the TRC is compared below with the actual timeline of implementation of its full mandate:

Reference 136 - 0.01% Coverage

Specific Events & War Crimes and Human Rights Violations

Reference 137 - 0.07% Coverage

The TRC's Diaspora Project was designed to fully include the voice of the large Liberian Diaspora in the TRC processes; innovative, it was a response to some of the unique dynamics of the Liberian conflict, thus redefining the way in which truth and reconciliation commissions should operate - from local or nationally-centered bodies to global truth-seeking institutions - by conducting international hearings that included testimony and perspectives from its citizens abroad, thereby raising the bar of ingenuity in transitional justice approaches. The Diaspora Project began in Minneapolis, MN, USA, which is home to approximately five thousand of the forty thousand Liberians living in the USA, with the assistance of one of the TRC's key partners, the Advocates for Human Rights, which served as a primary implementer of the Project. The Diaspora project resulted in the collection of approximately one thousand five hundred statements from victims and alleged perpetrators of Liberia's various episodes of state chaos and conflict. The project eventually conducted activities in eleven US cities, and in Ghana, Nigeria and Sierra Leone where a significant number of Liberian refugees in West Africa reside. Community Advisory Committees comprising credible Liberians were established in each city hosting a project. Numerous outreach events were organized in collaboration with the advisory committees and were often hosted by the target communities. This approach ensured Diaspora community involvement and support for the Project. Approximately one thousand statements were collected from Liberians in West Africa.

Reference 138 - 0.05% Coverage

The Truth and Reconciliation Commission (TRC) collected narrative statements from as many individual statement givers as possible about the violence they experienced or witnessed during the conflict. Each statement covers detailed insight into the nature of violations and experience of particular statement-givers. A quantitative analysis have been gathered which identifies patterns and trends of violations experienced or perpetrated by the statement-givers collectively. Together, the aggregate group of statements can magnify the voices of victims and provide a body of empirical data that can help in processes of acknowledgement, accountability, understanding and closure. Recommendations for how the TRC should proceed with its work and its final report were also solicited from those persons who participated in the process and the public in general. As a result of its careful statement-taking approach, the TRC generated the goodwill of the public and succeeded in obtaining over twenty thousand statements from Liberians in Liberia and in the Diaspora, including the USA and West Africa; excluding statements collected by the UNDP in a human rights violation mapping project to complement the work of the Commission.

Reference 139 - 0.07% Coverage

Table 1, gives the number of statements collected by the TRC by the county in which the statements were taken and the sex of the statement giver. This table includes all statements collected in Liberia, including those which were found to be lacking or missing information about where the statement was taken. The TRC collected and processed 17,416 statements. This figure is significant for two reasons. First, given the relative size of Liberia, particularly in comparison to truth commissions in other countries, up to 17,000 statements is a sizable number for the TRC statement takers to collect and the system to process. For example, the TRC in South Africa collected approximately 21,000 statements in a country nearly fourteen times the size of Liberia. The South African TRC had, by far, much more resources and time allowance incomparable with what the TRC of Liberia was endowed with. Second, despite the large number of statements, nearly all of the statements collected in Liberia were analyzed for inclusion in the TRC's analysis of reported human rights violations contained in this report. In actuality, the TRC collected 20,560 (see Table 1B below) statements out of which only 17,416 were processed in the data base due mainly to administrative, operational and resource constraints. Additional time and money would have been required to hire additional coding staff, and afford investigators to go in the field to fill in missing information on some unprocessed statement forms.

Reference 140 - 0.06% Coverage

Diaspora Statement Taking Experience: In Liberia, statement-takers were Liberians paid by the TRC, but statement takers in the Diaspora were all unpaid volunteers recruited from pro bono affiliates. Most were non-Liberian, but Liberians were welcomed to the process, and several did complete the training and participated as statement takers. In addition to reviewing a 400-page training manual, all volunteers were required to complete a nine-hour in-depth training program. Volunteer trainings were held in all project locations; volunteers who were unable to attend could also complete the training by viewing video replay of the sessions which remain available on-line. Volunteer statement takers received training on the mandate of the TRC, the history of Liberia and the conflict, international human rights and humanitarian law, statement-taking protocols and policies, interviewing survivors of torture and war trauma, avoiding vicarious trauma, and cultural considerations for working with Liberians. All training sessions included a mock TRC statement interview facilitated by The Advocates' staff and a Liberian volunteer. Trainers included The Advocates' staff, Commissioners, psychologists, Liberian professionals and community leaders, as well as academics.

Reference 141 - 0.02% Coverage

After sessions of counseling, some witnesses changed their minds and submitted to public hearings and vice versa. Witnesses for these hearings were chosen based on review of individual statements made to the commission and the representative nature of the individual's experience, which when made public, would resonate with the society at large and throw light on the general impacts and trends of human rights violations on the general community, society from an individual experience.

Reference 142 - 0.03% Coverage

The Commission published in at least three local newspapers and on internet news outlets, including the TRC's own Website, its final notice to the public of individuals requested to appear, as perpetrators or alleged perpetrators, to answer allegations of human rights violations and war crimes or as ,persons of

interest' just to provide clarity or throw light on issues important to the work of the Commission. The hearings were held without incident and without the use of compulsory process. All heads of former warring factions appeared, except former president Charles Taylor who declined. Politicians of the TWP and the seventies appeared as did rights activists, political leaders and commanders of the former warring factions.

Reference 143 - 0.01% Coverage

Thematic and institutional hearings: The Commission held a series of ,thematic' hearings that addressed the trends, themes, and root causes of the conflict. Engendered was a public forum facilitating a national conversation and/or debate on the patterns of human rights abuses and the conflict which engineered it. These

Reference 144 - 0.03% Coverage

Institutional hearings were, in limited instances, held to review the current and past status of basic public institutions so as to ascertain the impact of the conflict on these institutions and the role, if any, these institutions played during the conflict. Responding to these queries will facilitate debates on these institutions, their mandates and functions and how they may be reformed in a post-conflict situation to ensure their effective performance and response to the challenges of state building, greater democracy and respect for human rights which will guarantee a non repetition of the experiences of the past.

Reference 145 - 0.04% Coverage

hearings in the diaspora. The Liberian TRC was the first national TRC to hold public hearings in the United States. They were held June 9-14, 2008 at Hamline University in St. Paul, Minnesota. All eight Commissioners presided over the hearings, which centered on the theme of ,Confronting Our Difficult Past for a Better Future: The Diaspora Experience.' Twenty nine witnesses from ten states traveled to St. Paul to testify about the human rights abuses in Liberia that forced them to flee, their experiences in flight and in refugee camps, and the experience of resettlement in the United States. The hearings also provided Liberians in the Diaspora the opportunity to present their experiences and recommendations directly to the TRC, which is mandated to make binding recommendations to the government of Liberia. Hearings in the Diaspora and all other processes were mirrored as closely as possible to processes in Liberia.

Reference 146 - 0.05% Coverage

Training, awareness, and sensitization were incorporated into the TRC strategy to educate the people on all aspects of the Commission's work. Such broad and comprehensive information facilitates direct face-to-face dissemination of information from one person to another, an effective medium of education for communities, organizations and institutions on the work of the TRC. Community members were sensitized on the history of the TRC, Statement Taking Process, Expectations, Confidentiality, Security, Human Rights, Amnesty, Prosecution, Reparation, & Reconciliation. Other areas were Hearings, Psychosocial Support services, community outreach strategy, Goals of the TRC, the CCC and events like the CRC, NCR, research projects, etc. Such goals, if always emphasized, are meant to educate the Liberian people on the TRC, gather support and inputs from the people, inform the TRC report and recommendation generating processes, make sure that community members would use their knowledge, influence and standing to advocate for the implementation of the recommendations, ensuring that the work of

Reference 147 - 0.09% Coverage

In each of the 15 counties in Liberia, the TRC had a County Coordinator, field officer or general mobilizer along with other auxiliary staff, including TRC first line of important contact, the statement-takers, to drive through the work of the TRC in the county, making sure it succeeds. The coordinators hailed from their county of assignment and were well known and respected by their people. The TRC tried to ensure also, that all other staff were also citizens or residents of the county, culturally sensitive and communicates well with the people in all respect, including their spoken language. Other personalities and officials affiliated with, and contributing to the work of the commission, are the various county superintendents, city mayors, district and township commissioners, traditional and religious leaders, community leaders – youth, women, - Child Protection agencies, pro democracy and human rights organizations, district representatives, and civic organizations, education institutions and authorities, the county oversight Commissioner of the TRC, the program Department and the TRC Chairman; all constituted county structures.

Criteria: As a matter of criteria, everyone affiliated with the TRC process were legitimate institutions and personalities not known to have a track record of human rights violation, or any other type of misconduct, whether within Liberia or not that might have impugned the integrity of the Commission. Members, affiliates, employees or agents of the TRC were expected to be extremely committed to the TRC process and demonstrate a willing interest to work along side the TRC and within the TRC's Act, and Rules and Procedures. Everyone affiliated with the TRC was presumed not to be in any way a member or supporter of any armed faction or violence-related institution or illegal entity, whether or not within Liberia, in the past or present and also not an active member of any political party.

Reference 148 - 0.05% Coverage

Working Groups: The eleven sub-thematic issues were broken up into working groups for the purpose of small group discussions which allowed everyone present the chance to voice their concerns and issues that they wanted to see approached by the TRC in its final report and recommendations. Group representations were then presented to plenary for vetting and further inputs, by comments and further recommendations, and sharing additional perspectives beyond the group deliberations and presentations. The Report from the Diaspora was also received by the Conference from the representatives of Advocates for Human Rights, headed by Jim O'neal. Ahmed Sirleaf, also of the Advocates for Human rights, and Anthony Kessely, President of the Union of Liberian Association in the Diaspora were also part of the Diaspora delegation. NGO's, the international community and TRC Commissioners and Staff, also attended the Conference. The TRC took into consideration and in many instances adopted the recommendations of the Conference and incorporated them into its final work product constituting the body of recommendations contained in this report.

Reference 149 - 0.02% Coverage

The reports of the TRC are forthright responses of the Truth and Reconciliation Commission of Liberia (TRC) to its core mandate; to investigate and determine responsibility for 'egregious' domestic crimes, 'gross' violations of human rights and 'serious' humanitarian law violations; to examine the root causes of Liberia's various episodes of state breakdown and deadly conflict; and to recommend measures to ensure that truth, justice and reconciliation become permanent features of Liberia's socio-political, economic, legal and cultural landscape.

Reference 150 - 0.03% Coverage

Benetech was commissioned by the TRC to develop a data collection and analysis process to address key questions about human rights violations and the nature of the conflict in Liberia. Specifically, Benetech was involved in establishing analytical objectives, to give meaning, and logical and technical understanding of the huge data collected by the TRC. The task of Benetech also included designing and implementing an information management system, conducting statistical analysis and integrating quantitative findings based on methods of large scale data collection and quantitative analysis of statements and other data about human rights violations.

Reference 151 - 0.02% Coverage

Benetech worked with TRC staff and participated in training programs for TRC staff of the Data Coding and Information Technology department. The partnership with Benetech helped to build the capacity of the TRC in order to undertake the task at hand, of managing a complex human rights information management system so that it could accurately and defensibly quantify and report information about human rights violations in Liberia.

Reference 152 - 0.05% Coverage

Liberia's long experience with violence did not begin in 1979 as many may tend to believe or as implied by the temporal mandate of the TRC. The TRC Act mandated it investigate and document human rights violations dating from January 1979 to December 2003.

To the contrary, a historical review by the TRC of Liberia's conflict and state building past reveal a legacy of violence and deadly conflicts over issues of land tenure and ownership, trade, independence and interdependence, voice, participation and inclusion, etc. In establishing the root causes of our current conflict, its antecedent and historical causes become desirable. A catalogue of violent conflicts and wars which have underpinned unity and reconciliation in Liberia are presented herein. Also are human rights violations publicly documented by human rights institutions in Liberia and around the world, the worldwide mass media as well as local and international non-governmental organizations (NGO). Generally, these violations are not included in the TRC Data Base and are therefore considered supplementary and historical in nature which contributes to the TRC's mandate to investigate and document human rights violations that occurred between 1979 and 2003.

Reference 153 - 0.01% Coverage

8.2.2. Nature of Human rights violations in the First Republic 1847 to 1980

Reference 154 - 0.01% Coverage

Discrimination, marginalization and violation of fundamental human rights

Reference 155 - 0.01% Coverage

Discrimination and marginalization, violation of fundamental human rights

Reference 156 - 0.01% Coverage

Forced labor and forced recruitment, violations of human rights

Reference 157 - 0.01% Coverage

Human rights violations, massacres, looting

Reference 158 - 0.01% Coverage

Human rights violation, constitutional violation

Reference 159 - 0.01% Coverage

Constitutional violation, human rights violations

Reference 160 - 0.01% Coverage

Constitutional violation, violation of fundamental human rights

Reference 161 - 0.01% Coverage

Constitutional violation, military takeover and violation of human rights

Reference 162 - 0.01% Coverage

Human rights violation, constitutional violation

Reference 163 - 0.01% Coverage

8.2.3. Catalogue of Selected Human Rights Violations over the period 1979 – 2003 mostly documented by none TRC sources

Reference 164 - 0.01% Coverage

April 12, 1980: Samuel Doe's bloody overthrow of the TWP Government of William Tolbert. Scores were killed during the takeover on charges of corruption and human rights violations. On 17 April shadow trials without due process proceeded against 14 members of the government. 13 were publicly executed on April 22nd

Reference 165 - 0.02% Coverage

November, 1995: At least four LPC commanders were executed by firing-squad on the orders of a specially constituted court. According to reports, the execution followed a two-week investigation into human rights abuses.

December, 1995: UNOMIL observers commenting on the human rights situation in Tubmanburg confirmed that ULIMO-J had forced civilians out of the hospital where they had sought refuge from the fighting and had used them as 'human shields' to protect their positions.

Reference 166 - 0.01% Coverage

April, 2003: Abduction of civilians from displaced peoples camps by LURD forces. Repression on Human Rights defenders; Opposition Leaders

Reference 167 - 0.02% Coverage

December, 1999: Police arrested James Torh, the executive director of FOCUS, on charges of sedition in connection with comments he had made in a speech at a high school. James Torh had a record of speaking out about human rights concerns in Liberia and had publicly criticized President Taylor over the issue of a truth commission to investigate past abuses. He was released on bail after three days.

Reference 168 - 0.02% Coverage

March, 2000: James Torh, a prominent human rights activist, fled the country after Anti-Terrorist Unit officers twice came looking for him at his home at night. In December 1999, he had been briefly detained and charged with sedition for allegedly making remarks critical of the government. When he did not appear at a court hearing in April, the authorities ordered his re-arrest.

Reference 169 - 0.04% Coverage

November, 2000: Armed men believed to be civil war veterans, who reportedly included a senior armed forces officer, attacked members of a non-governmental organization, the Centre for Democratic Empowerment (CEDE), in Monrovia. They stabbed and wounded Conmany Wesseh, and physically assaulted Amos Sawyer, formerly head of the Liberian Interim Government during the civil war and CEDE Chairman, and other staff. The armed forces officer and seven others were subsequently charged with aggravated assault and released on bail to await trial. However, others believed to be also responsible for the attack were not known to have been investigated by police. Local human rights activists called for an independent inquiry. Suspects arrested in connection with a 1999 attack on the home of Conmany Wesseh and death threats against his family had been released without charge or trial despite evidence against them.

Reference 170 - 0.01% Coverage

September, 2001: Thompson Ade-Bayor, head of Liberia Watch for Human Rights, was illegally detained without charge or trial for 10 days after criticizing the security forces in a published article. The Liberian police reportedly paid fellow inmates to hang him by his feet and beat him.

Reference 171 - 0.02% Coverage

April, 2002: Tiawon Gongloe, a human rights lawyer, was arrested and tortured in police custody, requiring hospital treatment for his injuries. He was initially prevented from leaving the country and was briefly detained again in May.

June, 2002: Hassan Bility, a journalist with The Analyst newspaper, was arrested with two associates, following articles condemning human rights violations. Sheikh

Reference 172 - 0.02% Coverage

October, 2002: Aloysius Toe, a leading human rights activist, went into hiding in late October after police raided his home and briefly detained his wife and three other human rights activists. These arrests

followed the launch of a campaign by the Liberia Coalition of Human Rights Defenders to secure the release of Hassan Bility and Sheikh Sackor.

Reference 173 - 0.01% Coverage

Human Rights Activist/ Journalist

Police raided the home of Human rights Activist Aloysius Toe after Toe announced a week of solidarity for Hassan Bility and other detainees. Government officials said that e-mail documents were found in Toe's home that linked him with LURD rebels.

Reference 174 - 0.01% Coverage

Human Rights Activist/Journalist

Police arrested Blamoh Sieh, Director, National Human Rights Center and three staff members from the Center for protection of Human Rights

Reference 175 - 0.01% Coverage

Human Rights Activist/ Journalist

Police arrested and detained five Human Rights Activists Tunny Zeogar, Peter Nicholson, John Okai, Sam Nimely and Aloysius Toe for protesting the arrest of New Deal Movement Chairman Nigba Wiaplah.

Reference 176 - 0.01% Coverage

Massacre & Human Rights Violations

Reference 177 - 0.01% Coverage

Human Rights Activist/ Journalist

Police raided the home of Human rights Activist Aloysius Toe after Toe announced a week of solidarity for Hassan Bility and other detainees. Government officials said that e-mail documents were found in Toe's home that linked him with LURD rebels.

Reference 178 - 0.01% Coverage

Human Rights Activist/Journalist

Police arrested Blamoh Sieh, Director, National Human Rights Center and three staff members from the Center for protection of Human Rights

Reference 179 - 0.01% Coverage

Human Rights Activist/ Journalist

Police arrested and detained five Human Rights Activists Tunny Zeogar, Peter Nicholson, John Okai, Sam Nimely and Aloysius Toe for protesting the arrest of New Deal Movement Chairman Nigba Wiaplah.

Reference 180 - 0.01% Coverage

August 18, 1994 Massacre & Human Rights Violations

Reference 181 - 0.03% Coverage

8.3. Nature, Pattern and Character of Human Rights Violations and War Crimes (Equivalency Definition- Crimes Committed and how) categories

The catalogue of violations enumerated above evidences the distinct nature of violations of human rights that characterized the conflict in Liberia. Rightly so, the TRC has determined that gross violations of international human rights and humanitarian laws, egregious domestic violations and other forms of violations were very much pervasive in Liberia's several wars and armed conflict during the TRC mandated period of review.

Reference 182 - 0.03% Coverage

Considerable evidence available to the TRC given by witnesses, as well as snatches sometimes caught on televisions, reveal that cannibalism and rituals or juju practices were widely practiced by many fighters and their leaders including presidents during the war. These practices, without doubt, influenced their conduct in relationship to captured or surrendered opponents and the civilian population. In addition to cannibalism, there were severe/gross violations of human rights through the commission of such crimes as rape, murder, pillory, extreme torture, to mention but a few.

Reference 183 - 0.03% Coverage

From the inception of the conflict up to its very end in 2003, there was widespread lawlessness, and wanton disregard for the rights of civilians by all armed parties to the conflict who saw no reason not to recruit children into their ranks.. Human Rights Watch Report, 1994 confirms TRC findings that civilians suffered gross human rights violations from ,the capricious treatment associated with a military occupation - harassment and detention, torture, arbitrary arrest, physical abuseforced labor and rape, destruction of property and restriction on freedom of movement'.

Reference 184 - 0.01% Coverage

Starting with the government's response to the Rice Riots of 1979 and continuing through the Doe administration (1980-1989); the First Liberian Civil War (1989-1997); and the administration of Charles Taylor and Second Liberian Civil War (1997-2003), severe human rights and humanitarian abuses were pervasive in Liberia.

Reference 185 - 0.05% Coverage

Liberia is a signatory to key international instruments protecting fundamental human rights, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Geneva Conventions, and numerous other instruments that protect the rights of specific groups, such as women and children. During both the Doe and Taylor regimes, the government refused to take responsibility for the actions of its functionaries or rein them for the atrocities they committed. Because of this, they were perceived generally to be aware or sanctioning these atrocities committed under their watch. Moreover, Doe, Taylor and their close associates were directly implicated by TRC witnesses in personally perpetrating human rights abuses. The fact that human rights abuses could be perpetrated with complete impunity was a defining feature of the TRC mandate period, and numerous statement givers narrated their futile attempts to obtain justice for abuses committed against them.

Reference 186 - 0.04% Coverage

The peacekeepers in ECOMOG were not without their share of violations. Occasional reports of sexual exploitations, looting, torture or degrading treatment were made against ECOMOG. Killings, accidental and sometimes deliberate, were reported as were arms transfer and support to one faction against another. A little more than 800 violations were reported against ECOMOG. Notwithstanding, Liberians were quick to acclaim and gratify ECOMOG by the expression 'Thank God for ECOMOG'. In 1993 a Liberian medical worker in an interview granted Human Rights Watch spoke for many when he said 'ECOMOG was our savior; it was a salvation. ECOMOG saved the population of Monrovia. They avoided fighting, but were pushed into a corner. We feel sorry for them; they have no cause to die here for this stupid, senseless war'.

Reference 187 - 0.02% Coverage

Different armed groups were in existence during the mandated period of the TRC. Some groups had limited objectives and were short lived; others existed in name only while several others were merged into or with other groups. Yet still, several other groups never really operated in Liberia although organized by Liberians with objectives to engage in hostilities in Liberia. Many other armed groups engaged in human rights violations were state institutions, actors, or militias created by state authorities.

Reference 188 - 0.05% Coverage

Developing a human rights culture in Liberia is important, not as an end in itself, but as an important development and post conflict priority. A UN/OHCHR Assessment Mission to Liberia (2007) reported that addressing human rights priorities are also important as a means to development and preventing recurrence of violent conflict. The central issues that link conflict, poverty and human rights are the two issues of equality and state accountability- the principle that all individuals have equal rights to a life of dignity and freedom and that the state and other duty bearers have the obligation to respect, protect and fulfill those rights.

The report continues that the human rights situation is extremely precarious on several fronts, amid 'widespread poverty and lack of food security, employment, access to health care and education, basic services and a collapsed economy and widespread disruption in which some 86% of the population were dislocated at one time or another during the war. The war not only destroyed the economy and physical infrastructure but also institutions'.

Reference 189 - 0.06% Coverage

The West African nation of Liberia is recovering from years of conflict characterized by egregious violations of human rights that created the Liberian Diaspora. From 1979 until 2003, the Liberian people survived a bloody coup d'état, years of military rule, and two violent civil wars. The atrocities were the result of complex historical and geopolitical factors. The slave trade, U.S. efforts to return slaves to Africa, the abuse of the indigenous population by a ruling oligarchy, the looting of the country's substantial natural resources by its own corrupt government and by foreign interests, and the political ambitions of other African leaders all contributed to the conflict. The international community, including the United States, failed to take effective action to limit the bloodshed. Out of a pre-war population of three million, an estimated 250,000 people were killed, with as many as 1.5 million displaced. A mass exodus fleeing the fighting created Liberian Diaspora communities in many countries around the world, including the United

States. An estimated 30,000 Liberians live in the state of Minnesota alone, but there are also tens of thousands of Liberians living in other U.S. cities, in the United Kingdom, and in refugee settlements in the West African sub-region.

Reference 190 - 0.03% Coverage

The war has left deep-rooted resentments and divisions along ethnic and political lines in the resettled Diaspora. Meetings of tribal associations are said to be more popular and draw better attendance than meetings of pan-Liberian associations. Conflicts within the community persist, but on a more personal level. Liberians exchange accusations of human rights violations and allow anger over real or perceived wartime abuses to inhibit effective community action. Memories of the war are exacerbated for those individuals who see their perpetrators walking freely in their communities. A fear of retribution, either in the Diaspora or against relatives back home, deters many people from making open accusations.

Reference 191 - 0.02% Coverage

Liberians have had little faith in judicial institutions to protect their interests or fundamental rights. Inadequate compensation for judicial officers, and the influence of Liberian patrimonial governance structures subjected the judiciary to political, social, familial and financial pressures. The Judiciary yielded to these pressures much as the executive and legislative branches have in time past making reform of public institutions imperative to conform to the norms of human rights, security and development.

Reference 192 - 0.01% Coverage

• Mass illiteracy and poverty; • Corruption; • Economic disparity; • Violation of human rights without redress; • Exclusion and marginalization; • Ethnic rivalry; • Disunity; • Land acquisition, tenure, and distribution; • Over centralization of power and wealth; and

Reference 193 - 0.01% Coverage

• Pursuant also to its economic, commercial and cold war interest the US supported the Doe junta in an unprecedented way that made Doe the highest recipient of US per capita aid ever in sub-Saharan Africa; most aimed at acquiring military hardware and to suppress and violate human rights;

Reference 194 - 0.01% Coverage

10.2 Nature, Pattern and Character of Human Rights Violations •
Wanton and deliberate human rights abuses • • • • •

Reference 195 - 0.05% Coverage

Culturally, it is said that these practices were based on fears that women would dominate their partners if allowed the 'space' to do so. Women were expected to be respectful and to speak when spoken to, especially the „civilized“ women. A man interviewed during the study was recorded to have said, “During the days of our forefathers women were respectful. But these days women are not respectful. When you talk one, they [women] will talk ten”. The Hinterland law allowed men to overtly oppress women and entrench the tendency to treat women unjustly. Even after a woman had borne her husband's children, he could take her back to her relatives, saying that he did not want her any more, and she would have no

recourse. This denial of the basic legal and human rights of women, especially the perception of women as the „property“ of her husband or father, rendered women and girls extremely vulnerable to abuse and exploitation, and without access to recourse. This laid the foundation for the extreme violations perpetrated during wartime because men had already been socialized to violate women with impunity.

Reference 196 - 0.02% Coverage

- Consisting of members from all armed factions that operated during the Liberian wars, perpetrators specifically targeted children in the commission of gross violations of international law, including gross violations of international human rights law and serious violations of international humanitarian law. These violations included targeted killings and extermination, abduction and forced recruitment, forced labour, rape and other forms of sexual violence including sexual slavery and gang rape, forced marriage, and torture.

Reference 197 - 0.01% Coverage

- Breakdown in the efficiency of the civil service and the merit system Wanton disregard for the values of human rights and the rule of law Religion, Ethnicity and intolerance emerges in the political culture

Reference 198 - 0.01% Coverage

- TRC statistical analysis of over 17000 witnesses' testimonies commissioned by the Commission and undertaken by the Benetech Human Rights Project (a non-Liberian Human rights organization).

Reference 199 - 0.01% Coverage

Reports from international human rights organizations for the period 1979 to 2003 of Amnesty International, Human Rights Watch, Global Witness, etc.

- Newspapers, magazines, periodicals and internet resources on the conflict, the history of Liberia and human rights violations occurring in Liberia during the period 1979 to 2003.

Reference 200 - 0.02% Coverage

The TRC determines that all individuals affiliated with warring factions or armed groups in positions of command authority and decision making including political leaders, financiers, heads of warring factions, commanders, and foot soldiers are responsible for the commission of those human rights violations including violations of international humanitarian law, international human rights law, war crimes and egregious domestic laws violations of Liberia.

Reference 201 - 0.03% Coverage

The TRC determines that all armed groups whether affiliated with warring factions or the Government of Liberia are responsible for the commission of those human rights violations including violations of international humanitarian law, international human rights law, war crimes and egregious domestic laws violations of Liberia. These groups include: NPFL, LURD, Liberia Peace Council, Militia, ULIMO, MODEL, Armed Forces of Liberia, ULIMO-K, ULIMO-J, Anti-terrorist, ECOMOG, Vigilantes, Lofa Defense Force, Liberia National Police, Special Operation Unit, Revolutionary United Front (RUF), Special Anti-Terrorist

Unit Special Security Unit, Special Security Service, Black Beret, National Security Agency, National Bureau of Investigation, Criminal Investigation Division, and Kamajors.

Reference 202 - 0.01% Coverage

The TRC determines that all institutions and corporations including shareholders and corporate officers and their agents affiliated with or aided and abetted warring factions or armed groups are responsible for the commission of those human rights

Reference 203 - 0.01% Coverage

violations including violations of international humanitarian law, international human rights law, war crimes and egregious domestic laws violations of Liberia.

Reference 204 - 0.02% Coverage

The TRC determines that all Governments of the Republic of Liberia from 1847 especially from 1979 to 2003, are responsible for the commission of those human rights violations including violations of international humanitarian law, international human rights law, war crimes and egregious domestic laws violations of Liberia and economic crimes and for the actions of their functionaries acting in the name of the said government and for the sheer neglect of the population and the failure to provide protection for its citizens.

Reference 205 - 0.01% Coverage

The TRC determines that all individuals, artificial or natural, armed groups or factions, their leaders and members are responsible for the commission of economic crimes against the state and its people which the TRC now determines amounts to gross human rights violations and war crimes.

Reference 206 - 0.04% Coverage

The TRC determines that the conflict in Liberia dating back to the founding of the Liberian state and which was exacerbated by neglect, poverty, exclusion, political repression, ethnicity, and those human rights violations including violations of international humanitarian law, international human rights law, war crimes and egregious domestic laws violations of Liberia and economic crimes which characterized the conflict from 1979 to 2003 gravely impacted all segments of the Liberian society including but not limited to Liberians in the Diaspora and at home Women, Children, Youth, The Elderly, Vulnerable Groups, Cultural, Traditional and Religious Institutions, and Public Institutions.

The TRC determines that children are neither culpable nor responsible for acts of violations of human rights laws, humanitarian rights law violations, war crimes or egregious violation of domestic criminal law.

Reference 207 - 0.01% Coverage

- That national healing and reconciliation is essential for national unity and rebirth of a new nation founded on the principles of universal human rights, the rule of law and justice for all.

Reference 208 - 0.02% Coverage

The TRC hereby recommends the establishment of an "Extraordinary Criminal Tribunal for Liberia" to try all persons recommended by the TRC for the commission of human rights violations including violations of international humanitarian law, international human rights law, war crimes and economic crimes including but not limited to, killing, gang rape, multiple rape, forced recruitment, sexual slavery, forced labor, exposure to deprivation, missing, etc.

Reference 209 - 0.01% Coverage

The TRC recommends several persons for prosecution for those human rights violations including violations of international humanitarian law, international human rights law, war crimes and egregious domestic laws violations of Liberia and economic crimes. Some perpetrators recommended for prosecution include:

Reference 210 - 0.01% Coverage

The Jurisdiction of the Palava Hut to render pardon shall be limited to lesser crimes only; provided that a recommendation from the Palava Hut in favor of anyone accused of the commission of a high crime or gross human rights violations is made to the Head of State or a court of competent jurisdiction.

Reference 211 - 0.01% Coverage

The TRC recommends the prosecution for economic crimes, as gross human rights violations, all those persons, natural and artificial it finds responsible for the commission of economic crimes during the period of the Liberian conflict.

Reference 212 - 0.02% Coverage

An economic crime is any prohibited activity committed for the purpose of generating economic gain or that in fact generates economic gain by persons and actors whose economic activities contributed to gross human rights and / or humanitarian law violations in Liberia or that otherwise perpetuated armed conflict in Liberia, as well as those who benefited economically from armed conflict in Liberia. They include public and private persons, national and private corporations, and other business entities.

Reference 213 - 0.02% Coverage

The TRC recommends the building of a new political culture of tolerance and respect for the human rights of all persons including opposition in a pluralistic society that lends itself to freedom and liberty generally with all Liberians including the opposition understanding that the Government represents the people and that the people owe the Government a corresponding duty of loyalty and support.

Reference 214 - 0.02% Coverage

18.7. Recommendations Related to the Establishment and Resourcing of the Independent National Human Rights Commission (INHRC)

The TRC recommends that the Independent Human Rights Commission be brought up to international standards in conformity with the Paris principles and to ensure that the INHRC functions effectively including discharging its responsibilities as inheritors of the TRC process.

Reference 215 - 0.04% Coverage

The TRC further recommends to the National Elections Commission and the Government of Liberia that no person should be allowed to contest for an elected position without first being vetted for their involvement in the Liberian conflict and exonerated for having played no major role in the conflict for which sanctions have been recommended. The vetting institutions shall include the Independent National Human Rights Commission, the Elections Commission itself, social institutions with which the individual is involved (religious organizations for example), the local community from whence the person originated and/or currently resides, the general public.

The TRC also further recommends that under any public integrity mechanism or statute, there must be guarantees of redress for justice for human rights violations, intolerance for impunity and corruption, just compensation for labor, just compensation for land appropriated for public purposes, entrenched political culture of democracy and equity.

Reference 216 - 0.02% Coverage

The TRC recommends that regional and sub-regional organizations continue the process of peace mediation and regional integration to such an extent that there will be mutual respect for the sovereignty and territorial integrity of member states so that their countries will not be safe havens for human rights violators and war criminals.

Reference 217 - 0.02% Coverage

Secondary Sources: Human security 2005 1. Names, title, author of Books 2. Titles of Periodicals and articles 3. Website information 4. Newspaper publications 5. Annual human Rights Reports a. US State Department declassified information on Liberia, 1979 - 2003 b. Human Rights Watch Annual Human Rights Reports, 1979 – 2003 c. Amnesty International Annual Human Rights Reports, 1979 – 2003

Reference 218 - 0.01% Coverage

7. Minnesota Advocates For Human Rights TRC Diaspora Report 8. Research Memorandum by Minnesota Advocates 9. UN Security Council Resolutions on Liberia and the Conflict

Reference 219 - 0.02% Coverage

6. That there be prosecutions for all perpetrators in positions of leadership during the conflict—including heads of warring factions, frontlines commanders, and those who committed economic crimes and supported them—who are accused of violating international humanitarian and human rights law or crimes against humanity and have not acknowledged their wrongs or appeared before the TRC.

Reference 220 - 0.02% Coverage

9. That no blanket amnesties be granted, but that upon accounting for their deeds persons can qualify for amnesty if they were 1) below the age of 18 when acting as fighters or 2) did not violate international humanitarian and human rights law or crimes against humanity and cooperated with the TRC and spoke the truth and were remorseful.

Reference 221 - 0.01% Coverage

32. That the curriculum for children and youth be updated to include reconciliation, peacebuilding, human rights, and patriotism.

Reference 222 - 0.01% Coverage

36. That the Independent National Human Rights Commission be immediately constituted and empowered to undertake its important work, including ensuring implementation of the TRC's recommendations.

Reference 223 - 0.01% Coverage

Strengthen and expedite reforms already underway to: 1. Promote a culture of respect for human rights;

Reference 224 - 0.03% Coverage

1. In order to implement the recommendation of the Truth and Reconciliation Commission of the Republic of Liberia (TRC) to establish an 'Extraordinary Criminal Court for Liberia', an internationalized domestic court, to combat a culture of impunity, secure justice for victims and ensure that Liberia adheres to, respects and protects prevailing international human rights and humanitarian law standards, an Extraordinary Criminal Court for Liberia (hereinafter 'Court') is hereby established.

2. The Court shall have all of the necessary power and jurisdiction to prosecute persons referred to it by the TRC for gross violations of human rights (GVHR), serious humanitarian law violations (SHLV) and egregious domestic crimes (EDC) as enumerated by this Statute.

Reference 225 - 0.01% Coverage

2. No person may be a judge if there is evidence or a public perception that he or she is alleged to have committed any violations of human rights law or humanitarian law, or played any role in supporting armed conflict in Liberia.

Reference 226 - 0.01% Coverage

1. The Court shall have criminal jurisdiction over crimes defined in this Statute and in the TRC's Final Consolidated Report Volume II including those categorized as gross violations of human rights (GVHR), serious humanitarian law violations (SHLV) and egregious domestic crimes (EDC), and any other relevant crimes.

Reference 227 - 0.02% Coverage

3. The Court shall recognize that while human rights obligations generally apply to state actors, select GVHR including, for example, enslavement, genocide and crimes against humanity, sit atop the hierarchy of international human rights law and international humanitarian law, and increasingly extend to private persons and to private action.

Reference 228 - 0.01% Coverage

Gross Violations of Human Rights

Reference 229 - 0.01% Coverage

7. No person may be a member of the Registry if there is a well-founded public perception that he or she are alleged to have committed any violations of human rights law or humanitarian law, or played any role in supporting armed conflict in Liberia.

Reference 230 - 0.01% Coverage

6. No person may be a prosecutor if there evidence of and or a public perception that he or she is alleged to have committed any violations of human rights law or humanitarian law, or played any role in supporting armed conflict in Liberia.

Reference 231 - 0.01% Coverage

3. No person may be a staff member if there is a well-founded public perception that he or she is alleged to have committed any violations of human rights law or humanitarian law, or played any role in supporting armed conflict in Liberia.

Reference 232 - 0.01% Coverage

5. It is unlawful to force a confession or any other statement from a perpetrator, alleged perpetrator, or other person participating in proceedings. The Court may not base its decision on evidence obtained unlawfully or by violating human rights and freedoms prescribed in the Constitution of Liberia or international law.

Reference 233 - 0.01% Coverage

5. No person may serve as defense counsel if there is evidence of, or a public perception that he or she are alleged to have committed any violations of human rights law or humanitarian law, or played any role in supporting armed conflict in Liberia.

Reference 234 - 0.01% Coverage

Annex 3. Complete Listing of persons recommended for prosecution for gross Human rights violations and war crimes.

Reference 235 - 0.01% Coverage

grave human rights abuses in Liberia and throughout the region. Lastly, the companies unintentionally contributed to conflict when logging operations were looted by warring factions.

Reference 236 - 0.02% Coverage

The security forces of the OTC, Mohammed Group of Companies (MGC), Maryland Wood Processing Industries (MWPI) and Inland Logging Company (ILC) each committed gross violations of human rights and/or war crimes to maintain control over their respective logging areas, the local community and their employees. The security forces of the logging companies were nearly indistinguishable from the former

NPFL rebels. For instance, OTC security members that violated directives were sent to the war front as punishment.²¹

Reference 237 - 0.03% Coverage

However, the evidence available to the TRC demonstrates that a devastating amount of economic crimes were committed in the Liberian mining sector. Much like the timber sector, Liberia's mineral wealth was systematically exploited by the Liberian political elite for personal benefit through networks and partnerships with opportunistic foreigners. Licenses for the mining sector were not allocated in a transparent and legal manner, and corporations consistently failed to pay appropriate taxes. The sector also facilitated money laundering, terrorism, bribery of public officials and illegal arms trafficking. Security forces associated with mining companies also committed grave violations of human rights.

Reference 238 - 0.01% Coverage

Diamond companies also financially supported and hired private security forces that committed gross violations of human rights in Liberia between 1979 – October 14, 2003.

Reference 239 - 0.02% Coverage

The ratification and subsequent incorporation of international human rights instruments into national law is crucial to the advancement of women's rights. It imposes on states an obligation to interpret national law in a manner consistent with their duty to their population. Liberia ratified CEDAW in 1984 and is about to present its first and sixth report to the CEDAW committee in July 2009. This report comprehensively covers the status of women in Liberia today and makes a wide

Reference 240 - 0.01% Coverage

It is recommended that public education and awareness-raising be done on the existing national laws first, as well as international human rights conventions to which Liberia is a signatory.

Reference 241 - 0.09% Coverage

Under institutional reform, vetting is increasingly implemented to address human rights abuses. It is defined as a formal process for the identification and removal of individuals responsible for abuses from public office. Vetting is becoming an integral part of the process of restoring trust in organs of the state, in an attempt to ensure that the structures that facilitated human rights abuses in the past no longer exist. The collapse of the rule of law during the war with the army and the police involved in perpetrating acts of violence on civilians makes credible institutional reform essential for citizens, especially women, to regain their trust in the state organs. It is also vital that Liberian state institutions reform and transform so as to promote and foster gender equality. The institutional reform process should transform such institutions into efficient and fair institutions that respect human rights, maintain peace, and preserve the rule of law. Institutional reform measures in Liberia are recommended to create the following in all public institutions such as the police and the military: * the creation of oversight, complaint and disciplinary procedures; * public education and awareness campaigns to train the public, especially women, on how to access recourse if the system discriminates against them or is harmful, especially the translation of such procedures into Liberian English and other accessible forms of communication. * the reform or establishment of new legal frameworks; * the development or revision of ethical guidelines and codes of

conduct; * the provision of adequate salaries, equipment and infrastructure; * the reform of all institutions by screening and removing personnel who are deemed unsuitable for public employment, due to their willing participation in acts of violence and destruction during the war, from, for example, the security forces, the police or the judiciary.

Reference 242 - 0.01% Coverage

The Human Rights Commission (HRC)

Reference 243 - 0.03% Coverage

The TRC's engagement with the media considered certain realities as expressed in the three day workshop spent with panelists assessing today's media culture in the country, from the level of press freedom to the many challenges at hand and the media's readiness to contribute to the process of national development and reconstruction. There was a consensus that the press in Liberia (print and broadcast) is perhaps at its most difficult period in history, plagued by a myriad of issues resulting from the fourteen year civil war. As panelist Abdullai Kamara of the group, Journalists for Human Rights, put it, "Like all other sectors of Liberia, the media was completely devastated..." by the conflict. The ensuing problems could be summarized into the following sub-topics:

Reference 244 - 0.02% Coverage

Mrs. Hawa Goll-Kotchi, Commissioner of the Governance Commission, Mr. Morris Dukuly, former speaker of the erstwhile Transitional Legislative Assembly; human rights activist and former Director of the Justice and Peace Commission (JPC) of the Catholic Archdiocese made Others were; Attorney James Kabbah, Chief Clerk of the House of Representatives; Cllr. Jonathan Williams, Professor of Law

Mauritius - TJC Report-FULL> - § 59 references coded [0.19% Coverage]

Reference 1 - 0.01% Coverage

In passing the Truth and Justice Commission into law, the Assembly has followed in the footsteps of a number of diverse countries around the world which have conducted Truth Commissions over the past 25 years. In total, there have been 40 such Commissions, with several more in the offing. Without fail, all stressed the importance of dealing with the past and the moral duty to assist those who had suffered through policies and actions in the past. There is no one size that fits all. Each country is unique in its history, its political systems and its culture. Nevertheless, there are striking similarities in each country's search for Truth and Justice. There is always violence present in the histories of all of these countries, and there are always victims who have suffered from this violence. There is also always denial. There are many in each of these countries who have sought to deal with the past, as well as people who opposed it and who favoured amnesia rather than remembering. They argued that it was better to turn the page, not to disturb the past, but to move forward. Fortunately, there have also always been those who believe that it is impossible to build a democracy and a human rights culture in any country without taking seriously the past of that country. As George Santana put it, "Those who forget the past are condemned to repeat it". Thus, it is possible to learn from the experiences of widely differing Commissions without duplicating their journey.

Reference 2 - 0.01% Coverage

Because of the intensity of our experience and the never-ending calls on our time and energy, closure was always going to be difficult. Closure in respect of the TJC brought with it particular and peculiar problems. How does one stop seeking the truth? Yet, we had to draw the line and accept that truth-telling and truth-seeking cannot be confined to a particular Commission. The search for Truth and a commitment to Truth must be undertaken by the entire nation made up of ordinary people, politicians, government agencies, poets, film-makers, writers, academics and whoever cares about the future of Mauritius. The Commission has given a focus to what must now become a common endeavour. Transparency, accountability and Truth are essential ingredients in any nation which seeks integrity, the consolidation of democracy and a culture of human rights. So the search cannot end; it must be deepened and broadened to include all concerned Mauritian citizens.

Reference 3 - 0.01% Coverage

Attempts to abolish the slave trade during the French period had been aborted by the slave traders themselves. But in the 19th century, this was less possible. In French ports, the merchants of the Hague attracted all those traders, French and British, and it became the centre of opposition to the abolition of the slave trade. The Hague refused any extension of Human Rights in 1791 to free the Coloured population of the port. This has earned the port a notoriety for defending slavery. Freemasonry was also closely linked to both the slave trade and its abolition, as many traders were members of the freemason societies, as well as of the Amis des Noirs.

Reference 4 - 0.01% Coverage

This state of affairs is very disturbing in the year 2011 when the workers' rights are considered as Human Rights. One is tempted to compare this with the past. Call centres, the main activity of BPO, represent problems linked to Occupational Health and Safety. Some of these problems are:319

Reference 5 - 0.01% Coverage

On 30 July, 1830, a petition was presented to Governor Sir Lowry Cole on this occasion, and it dealt with the need for a Central College for Coloured children, but it also touched upon a number of recent cases of interment; for instance, in February 1826, Mlle. Bussac having died, her father had given instructions that she be buried in the Cemetery for Whites. When the cortège arrived at the gate, the watchman refused it entry on the grounds that he had orders from the Commissioner of Police not to allow the remains of 'Coloured people' to be buried in the 'Cimetière des Blancs', without his authorization. Told of this, the father, a white man, appealed, but to no avail. 383 A second instance of such blatant violation of Human Rights occurred on 4 June, 1826, when Mlle.

Reference 6 - 0.01% Coverage

The burdens of racism are many. These are highlighted in the report on Race Discourse. The impact of the emotional and psychological burden of racism cannot, in our view, be underestimated. To many people of slave descent and also those of indentured descent, racism imposes continuous experiences of inadequacy, inferiority and marginality on the least privileged in our society. Slave descendants and the least favoured among the indentured descendants need to continually respond to this victimisation in an attempt to salvage their dignity. This victimisation happens, despite the guarantee of basic human rights to dignity and equality in the Mauritian Constitution. We argue

Reference 7 - 0.01% Coverage

The exiled Chagossians are today dispersed in Mauritius, Seychelles and the U.K. In 2002, the Chagossians, who are presumed to be de facto British citizens, were allowed into the UK. These people, on their own, have fought to return to their native island and are presently awaiting the decision of the European Court of Justice for Human Rights over their right to return in their homeland. The tragedy is that it is nearly after 40 years that the Government of Mauritius has challenged Britain's decision to excise part of its territory. The argument is that the Chagos Archipelago was ceded to Britain in exchange for the rejection of certain proposals concerning the mode of electoral representation in a matter of long-standing debate.

Reference 8 - 0.01% Coverage

76. Aggressive campaigns on the promotion human rights should continue to be carried out • through various media, including media and school. Similarly, Consumer Laws should be tightened to provide sufficient protection to consumers, and sensitization campaigns should be carried out.

77. The promotion of interculturalism should be encouraged • as it helps to maintain national unity. Such a policy will undoubtedly further help the Mauritian nation to strengthen a common civic culture, based on the values of freedom, belonging, patriotism, and of human rights, while encouraging intercultural exchange.

Reference 9 - 0.01% Coverage

- That authorities and the private sector need to work harder in line with various international conventions, signed by Mauritian Government, concerning health, housing, education, environmental and human rights;

Reference 10 - 0.01% Coverage

Education and human rights

Human rights education was considered a priority by participants. Teachers should be trained in HR education. It was highlighted that actual differences between human beings were only minute yet were bloated out of proportion.

Reference 11 - 0.01% Coverage

Indeed, all the respondents stated that their employers do not recognise their human and legal rights as laid down in the various Human Rights Conventions and in the labour law exploit them.

Reference 12 - 0.01% Coverage

For the respondents, despite slavery was abolished in 1835, in fact, it is still perpetuated in Contemporary Mauritius but under modified forms. For them they are still slaves as their employers perpetuate illegal racist, discriminatory practices and subjugate them. They are denied their basic human rights.

Reference 13 - 0.01% Coverage

Consequently, the State engaged itself to respect and promote the rights set forth in the Convention without any discrimination so that each child can fully enjoy his/her human rights irrespective of his/her race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. In this respect, the Mauritian State committed to take all appropriate measures to ensure that children are protected against all forms of discrimination or punishment.

Reference 14 - 0.01% Coverage

An in-depth study should also be carried out to assess how far Mauritius abides by the various United Nations Conventions that the country ratified such as the International Labour Organisation Conventions and Human Rights Conventions and especially whether the International labour standard for paid domestic workers set by the ILO entitled 'Decent Work for Domestic Workers'¹⁷³ are respected.

Reference 15 - 0.01% Coverage

loopholes in the law An in-depth study to assess how far Mauritius abides by the International Labour Organisation Conventions and Human Rights Conventions Set up of regional reporting and complaint units

Reference 16 - 0.01% Coverage

in Mauritius, during the colonial period, under the French and British authorities, and since Independence, up to the present day. It seeks to establish that the 'Coloured Population', as 'Libres de couleur', was as much the victims of repressive measures and injustice during the French occupation (1715-1810) as descendants of slaves and, later in the nineteenth century, indentured labourers. After the capture of Isle de France by the British (1810), there ensued a long, hard fight by the 'Coloured people' for their Human Rights, as regards educational rights, the right to political representation and the right to land ownership, faced with increasing pressure to sell properties.

Reference 17 - 0.01% Coverage

The fight for political representation and Human Rights was as hard for the 'Coloureds' as it

Reference 18 - 0.01% Coverage

communion, demonstrate the sufferings endured by a defenceless 'Coloured Population'. Testimonies and petitions, handed in to successive British Governors, provide ample evidence of active discrimination against the 'Libres de couleur' and their descendants. Their few tribunes had to fight vigorously in the 1820s and 1830s for the most basic Human Rights which were denied to an

Reference 19 - 0.01% Coverage

Freed Coloured slaves were beginning to gain advancement through concessions of 156 arpents of land.⁴⁶ 'Libres' gradually became known as 'Gens de couleur', but were not recognized as deserving of political or educational, or basic human rights. At the end of the eighteenth century, Mauritius was already a multiethnic and multiracial society, but the privileges belonged to a minority of Whites who declared themselves to be of pure French blood. 'Creoles', including mulattoes, in the modern sense of the word, as Danielle Palmyre defines them,⁴⁷ were seen as outside good White French society, since it was the "groupe le plus métissé, ouvert à tous les brassages," in the words of Jean-Claude Véder.

Reference 20 - 0.01% Coverage

convince the British authorities of their Human Rights will be explored below, under 'Political representations'.

Reference 21 - 0.01% Coverage

the Commissioner of Police not to allow the remains of 'Coloured people' to be buried in the 'Cimetière des Blancs', without his authorization. Told of this, the father, a white man, appealed, but to no avail. ⁵⁹ A second instance of such blatant violation of Human Rights occurred on 4 June, 1826, when Mlle. Boucherat, a Coloured person, passed away. Once more, her father wanted her to be buried in the 'Cimetière des Blancs', but the watchman resisted and declared that he had no official permission from the Police Commissioner: "The parents of the young dead person resisted; the watchman resisted in turn; finally, the parents gave in, out of respect for the sacred grounds where they were." ⁶⁰ The petition concluded in 1830: "If we have objected to the existence of a separating wall forcefully, it is because we wished to underline the odious nature of this demarcation line that still exists [...] Thus, a thick wall separates our mortal remains from those of our fathers, while perhaps a ditch separates a respectable Coloured man from a white criminal whose head fell under the executioner's axe [...]" ⁶¹

Reference 22 - 0.01% Coverage

once more the vital need for a "Central College destined exclusively for the Coloured youths, a project submitted to your predecessor [...] We long, indeed, for the realization of this project [...] but since we had only obtained a personal subscription of 100 piastres from the Governor of the colony, it became impossible to envisage the completion of this project." ¹⁰⁹ From 1830 on, Coloured leaders continued to plead for access to Education, while deploring the conditions in which their community laboured and the

civil and political prejudices which confronted them. Despite the Ordinance of 1829 stipulating that in future, there would be only two categories of people, Free and Slaves, the Human Rights of the 'Coloured Population' continued to be ignored. The two petitions of 1826 and 1830 had been largely ignored by two unsympathetic Governors, Lowry Cole and Colville, who rejected the 1830 address, while showing his personal antipathy to the Coloured leaders. 110

Reference 23 - 0.01% Coverage

Colonial Assembly of Isles de France and Bourbon debated, and endeavoured to legalise, the human rights of slaves and 'Coloured people'. In 1791, even before the first Abolition, the Assemblée Coloniale of 8 September, decreed the necessity to uphold Justice and declared: "Coloured people, born of free fathers and mothers, will be admitted to all future parish and colonial assemblies, if they have the required qualifications." 124 The same Assembly affirmed that Municipalities would register as electors "Coloured citizens born of free fathers and mothers, who meet all the criteria stipulated by the Constitution." It proclaimed: "All Citizens are equal in the eyes of the Law." 125

Reference 24 - 0.01% Coverage

sight of. The divisions among the Coloured leaders did not help their cause; Hitié argues rightly that in the 1820s and 1830s, many supported Adrien d'Epinay because they were themselves landowners and possessed slaves. 128 But the decisions of the Colonial Assembly, summarized above, rankled in the light of prejudices aimed at their community. Napoleon's decision arrested the progress of Human Rights for 'Coloured people' for thirty years; Hitié argued: "It is such a great monstrosity that it had the effect of a retrograde step of 30 years in terms of the rights of Coloured Population." 129 Throughout the 1820s, 1830s and 1840s, in their political representations to a succession of Governors, Coloured leaders were to come back again and again to the decrees of the Colonial Assembly (1791-1793).

Reference 25 - 0.01% Coverage

Mauritius is a young democracy which forms part of a global society that prides itself on the protection and advancement of Human Rights. Mauritius also aspires to be a model society and economy among the developing countries of the global South. To achieve these important objectives, it is important for the current and democratically elected government, to pursue not only economic partnerships with emerging and established economies, but also social justice. To this end, the Government of Mauritius has, following the example of the South African Truth and Reconciliation Commission (TRC), mandated a Truth and Justice Commission to investigate the legacies of slavery and indentured labour.

Reference 26 - 0.01% Coverage

The research is also motivated by the broader (but no less important issue) of the protection of Human Rights in Mauritius. As is noted in this report, discrimination in general (i.e. on the grounds of ethnicity, culture, gender and age), diminishes the protection of Human Rights both nationally and internationally. In its Millennium Development Goals (MDGs), the United Nations is concerned to eradicate discrimination and to decrease the possibilities for acts of extreme prejudice (i.e. genocide, xenophobia and ethnocide). As a signatory to various conventions of the UN regarding the protection and advancement of Human Rights, the onus is on the Mauritius Government to critically review the legacies of slavery and indentured labour and to determine the extent to which these legacies affect the implementation of a Human Rights culture in Mauritius.

Reference 27 - 0.01% Coverage

Although they assert that respecting one's comfort zone does not mean that they are racist and is rather a form of fair discrimination, it is obvious that the concept of a so-called comfort zone is in fact a disguised form of racism in that it is a disguised means of justifying racism and is a breach of the laws of Human Rights.

Reference 28 - 0.01% Coverage

The burdens of racism are many. In this report, we have noted a few of the more significant burdens which Mauritians of all skin colours continue to experience today. The impact of the emotional and psychological burden of racism cannot, in our view, be underestimated. For many people of slave descent and also those of indentured descent, racists impose a continuous feeling of inadequacy, inferiority and marginality on the least favoured in our society. Slave descendants and the least favoured among the indentured descendants need to continually respond to this victimisation in an attempt to salvage their dignity. The victimisation happens despite the guarantee of basic human rights to dignity and equality in the Mauritian Constitution. In our next section, we argue that the Mauritius Government, together with Civil Society and international institutions interested in supporting our country to achieve true democracy, need to address, not only issues of structural, but also social inequality in Mauritius.

Reference 29 - 0.01% Coverage

26. Gloppen, S. 2005. 'South Africa's Truth and Reconciliation Commission as an International Model'. IN Kolstad, I. and Stokke, H. (eds). Writing Rights: Human Rights Research at the Chr. Michelin Institute 1984 – 2004. Norway: Fagbokforlaget.

Reference 30 - 0.01% Coverage

exploitation and oppression, slavery has had worse consequences with huge implications for the psyche of the individual. Slavery, which has been described as a 'crime against humanity', and 'indentured labour' show us the extent to which people emanating from these two groups have been deprived of certain fundamental Human Rights – including the right to education. More importantly, the impact and implications of these two systems on people's identities and the disconnect that emerged between them as 'beings' and the larger system and sub-systems such as schooling are discussed.

Reference 31 - 0.01% Coverage

education as a fundamental Human Right only saw the light of day as late as 1948 in the Universal Declaration of Human Rights, Article 26, of the Declaration notes:

"Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit....Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups and shall further the activities of the United Nations for the maintenance of peace...parents have a prior right to choose the kind of education that shall be given to their children."

Reference 32 - 0.01% Coverage

Human Rights Issue

Slaves were deprived of what are considered today to be fundamental Human Rights

Reference 33 - 0.01% Coverage

descendants of slaves today and for opening up new tracks towards their individual and collective healing. Treated as marginalized citizens, the descendants of slaves are struggling for the recognition of their Human Rights, according to the different United Nations Conventions signed by the Mauritian State.

Reference 34 - 0.01% Coverage

101. Global instruments: The Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), and the International Covenant on Economic, Social and Cultural Rights (1966), plus a number of specific conventions, such as the International Convention on the Elimination of Racial Discrimination (1965), the Convention on the Elimination of Discrimination Against Women (1979), the Convention Against Torture (1984), and the Convention on the Rights of the Child (1989). Regional instruments: African countries: African Charter on Human and Peoples Rights (1990), Grand Bay (Mauritius) Declaration and Plan of Action for the Promotion and Protection of Human Rights (1999), African Charter on the Rights and Welfare of the Child (1990). African Platform on the Right to Education (1999), OAU Refugee Convention (1969), Protocol on the Rights of Women in Africa (2003). Eight major ILO Conventions: Conventions on freedom of association and collective bargaining (conventions 97, 98), on elimination of forced and compulsory labour (conventions 29, 105), on elimination of discrimination in respect of employment (Conventions 100, 111), on abolition of child labour (Conventions 138, 182)

Reference 35 - 0.01% Coverage

The history of slavery is the history of inhuman treatment, misery, exploitation and violation of human rights scarring the dignity and self-esteem of individuals in the innermost sanctum of their body. Historians concur on this thread of slaves' life-course journey.

Reference 36 - 0.01% Coverage

Attempts to abolish the slave trade during the French period had been aborted by the slave traders themselves. But in the 19th century, this was less possible. In French ports, the commercants of the Hague attracted all those traders, French and British, and it became the centre of opposition to the abolition of the slave trade. The Hague refused any extension of Human Rights in 1791 to free coloured population of the port. This has earned the port a notorious reputation for defending slavery.

Reference 37 - 0.01% Coverage

Industrial Relations in the Sugar Industry were very often questioned by the Trade Unions; it seemed that till then, the sugar oligarchy found it hard to envisage industrial relations in new perspectives, whereby workers would be treated as human beings with basic human rights, and expecting decent wages and working conditions. Mr. Balogh's and Bennett's views were still relevant.²⁸⁷

Reference 38 - 0.01% Coverage

This state of affairs is very disturbing in the year 2011 when the workers' rights are considered as Human Rights. One is tempted to compare this with the past. Call centres, the main activity of BPO, represent problems linked to Occupational Health and Safety. Some of these problems are:²⁹⁵

Reference 39 - 0.01% Coverage

One significant fact about the occurrence of most Truth Commissions, held throughout the world, is that what previous generations would likely have been forgotten or suppressed, is today discussed and dissected in public forums. Obviously, the Truth and Justice Commission cannot, by itself, repair the legacies of trauma and deprivation that slavery and indenture have left, but it has created clear, undeniable public records of what occurred – records that provide an essential buffer against the inevitable tendencies to deny, extenuate, and forget. Perhaps most importantly, TJC offers the one thing that victims of gross Human Rights abuse almost universally cite as their most pressing need: the opportunity to have their stories heard and their injuries acknowledged.

Reference 40 - 0.01% Coverage

The advent of Independence in 1968 marked a new departure in Social Justice and equal opportunities for each and every one. Social Justice was reinforced in specific clauses in the Constitution which prohibits discrimination on the basis of race, colour, gender, caste, public opinion, etc. Any citizen feeling aggrieved by dispossession of his rights can appeal to various institutions set up, such as the Ombudsman, the Independent Commission Against Corruption (ICAC), the Appeal Tribunal, as regards appointments and promotions in the Civil Service, the Human Rights Commission, quite apart from any complaints which may be lodged through the competent Law Court.

Reference 41 - 0.01% Coverage

17. Aggressive campaigns on the promotion Human Rights should continue to be carried out through various media, including media and school, so that the population is aware and learns the importance of respecting its fundamental rights. Similarly, Consumer Laws should be tightened to provide sufficient protection to consumers, and sensitization campaigns should be carried out to empower the population with consumer protection knowledge.

18. The promotion of multiculturalism should be encouraged as it helps to maintain national unity. Such a policy will undoubtedly further help the Mauritian nation to strengthen a common civic culture, based on the values of freedom, belonging, patriotism, and of human rights, while encouraging intercultural exchange.

Reference 42 - 0.01% Coverage

The concept of Human Rights was developed in the mid eighteenth century, with the surge of a generation of thinkers and humanists. In France, the Siècle des lumières in the mid-18th century, saw the emergence of reformers like Jean-Jacques Rousseau, Montesquieu, Voltaire and Camille Desmoulins, all precursors of the French Revolution of 1789 which led to the proclamation of Human Rights which later on became the basis for the universal Declaration of Human Rights. But it was not before the early 19th century that the concept of a more egalitarian society was mooted by powerful thinkers like Le Comte Henri de St. Simon, Charles Fourier Robert Owen and Louis Blanc. All these precursors dreamt of a more

egalitarian society where the concept of liberty, equality and fraternity would not be mere slogans.² They were the pioneers of the co-operative movement and socialist ideas. But much water would, however, to pass under the bridge before the rights of the poor and the down-trodden would be a priority of the Government in power.

Reference 43 - 0.01% Coverage

The exiled Chagossians are today dispersed in Mauritius, Seychelles and the U.K. It was in 2002 that the Chagossians, who are presumed to be de facto British citizens, were allowed in the UK. These people, on their own, have fought to return to their native island and are presently awaiting the decision of the European Court of Justice for Human Rights over their right to return in their homeland. The tragedy is that it is nearly after 40 years that the Government of Mauritius has challenged Britain's decision to excise part of its territory. The argument is that the Chagos Archipelago was ceded to Britain in exchange for the rejection of certain proposals concerning the mode of electoral representation in a matter of long-standing debate.

Reference 44 - 0.01% Coverage

Indeed, they were governed by the Code Noir, 1723, that explicitly objectified them as the property of their masters. The slaves were not human beings and thus did not have any human rights. The latter, the Freed population and Coloured People, did not enjoy the same status and privileges as the Colons who were the only Citizens.

Reference 45 - 0.01% Coverage

The living conditions of the Chagossians in the different suburbs of Port-Louis are still to be improved. The younger generation finds it easier than the older generation to adapt to the Mauritian way of life. The latest figures indicate they number approximately 4,700, with some 600 living in Seychelles. Quite a number of Chagossians were given British passports and left for the UK. The single largest concentration is in Crawley, West Sussex. In 1983, some leading Chagossian members formed a group called 'Chagos Refugee Group' to defend the rights of the Chagossians to return to their homeland. The group started a national and international campaign to promote the Chagossian cause. The campaign gradually gained momentum as the international Press, Human Rights groups, academia, conservation groups, film-makers etc. stood up for the Chagossian cause.

Reference 46 - 0.01% Coverage

The determination of the Chagos Refugee Group, backed by an 'All Party Parliamentary Group on Chagos', established in London in 2008, to fight against the injustice caused to the Chagossian community by the British Government, led them to file a case at the European Court of Human Rights. The British Government decided, in 2010, to contest the case, instead of seeking a friendly settlement. The case is still pending at the European Court of Human Rights. The Chagos Refugee Group also filed a case before a US Court in 2001 against the US Government. Not much came of it under the Bush Administration. There may be hope under the Obama Administration.

Reference 47 - 0.01% Coverage

research from different perspectives (anthropological, international politics, human rights and historical) has been conducted on the Chagossian experience of exile to furnish documentation pertaining to the Chagossian court case.

Reference 48 - 0.01% Coverage

as from post second World War that correlates with the end of the British Empire¹⁵. The decision to give freedom and independence to colonial territories was not an altruist choice motivated by human rights considerations, but rather a political and economic decision.

Reference 49 - 0.01% Coverage

Colonial Counties and Peoples was adopted on 14th December 1960. This declaration sets out a series of principles, intended to guide the progressive stable and peaceful independence of the colonies "based on respect for the principles of equal rights and selfdetermination of all peoples, and of universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."

Reference 50 - 0.01% Coverage

for Human Rights. While the Islanders are fighting for their right to return and for compensation for their dislocation, territorial disputes and sovereignty claims underpin the Mauritian Government's legal actions. In this respect, on 20th December 2010, Mauritius initiated proceedings against the United Kingdom under the dispute settlement provisions of the 1982 United Nations Convention on the Law of the Sea. In view of the recent political upheavals in the Arab-Islamic countries, the right of return of the Islanders is a delicate and sensitive human rights issue. We can question whether security and defence matters will not take precedence over the human rights of the Islanders again, as was the case in the ruling of the House of Lords that judged that "the Chagossians returning to the outer Chagos Islands could lawfully be displaced for the time being in the interest of defence but that there was no reason why the ban should not be lifted if circumstances changed²²."

Reference 51 - 0.01% Coverage

This issue is still a space of a highly fraught constitutional and human rights debate. In fact, until now there is no universal fixed definition of 'indigenous'. Even the United Nations have not adopted an official definition. It remains a flexible construction with legal, social, cultural and political conceptualisations diverging. Yet, in the context of human rights issues, the United Nations' understanding of this term primes. They identify 'indigenous' people on the following criteria: (i) self-identification as indigenous people at the individual level that is accepted at community level; (ii) historical continuity with precolonial and/or pre-settler societies; (iii) a strong link to territories and surrounding natural resources; (iv) distinct social, economic or political systems; (v) distinct language, culture and beliefs; (vi) people forming non-dominant groups of society and (vii) people desire to maintain and reproduce their ancestral environments and systems as distinctive people and communities.

Reference 52 - 0.01% Coverage

The United Nations Declaration of Human Rights and on the Rights of Indigenous

Reference 53 - 0.01% Coverage

Human rights were recognised to be inherent in a peoples' dignity and as being equal, unalienable, universal and indivisible. Hence, it is the duty of States to ensure that the human rights of all people, both citizens and refugees, are respected and promoted.

Reference 54 - 0.01% Coverage

All the research conducted discloses that in 21st-century Mauritius, this population continues to be an underclass and vulnerable citizens who bear the burden of their forced and illegal displacement and resettlement. They live in relative poverty and experience multiple impoverishments and multiple victimisations. The latter continue to endure the negative aftermath of historical patterns of socio-economic exclusion and discriminations and of the denial of their human rights.

Reference 55 - 0.01% Coverage

1. Nauvel, C., 2006, A return from exile in sight? The Chagossians and their struggle, *Northwestern Journal of International of Human Rights*, Vol. 5, issue 1, pp. 99-126.

Reference 56 - 0.01% Coverage

4. Vine, D., 2006, The impoverishment of Displacement: models for document human rights abuses and the people of Diego Garcia, viewed on 23rd August 2011, <http://www.wcl.american.edu> Dissertations 5. Dedaur, F., 1999, *Esquisses d'une insularité: Archipelago des Chagos*. 6. Valéran, M.J.G., 1999, *The Uprooting of the Chagossians: A Sociological Study*. Books 7.

Reference 57 - 0.01% Coverage

conservation of fish, birds and other animals, food protection, energy alternatives, leisure activities, training on the job, agricultural development, social activities, human rights, protection of historical sites, land allocations, engineering works, etc. Note: employees who show interest in these particular fields shall be given facilities to learn and to perform additional duties in the above relevant fields..."

Reference 58 - 0.01% Coverage

254 Jennie Ferris, Sarah Burns, and Deena Liatsopoulos, "The problems and barriers of records and information management in Africa," in *Program for the 8th Annual EGSS Conference (présenté à the Education for a Diverse World: Addressing Equity & Human Rights, McGill University, Montreal, Quebec, Canada, 2009)*, 26.

Reference 59 - 0.01% Coverage

Emancipation is also presented as a negative event in history and as only benefitting the rich and powerful: "the abolition, proclaimed in 1835 in all the British colonies, eventually proved to be more beneficial to the masters than to the slaves, since the period of apprenticeship that followed was strangely identical to slavery, as the fundamental human rights were still being flouted."

Reference 1 - 0.38% Coverage

The Justice and Reconciliation Commission is composed of one President and 16 members, half of whom are members of the Human Rights Advisory Council and the other half from outside this organization, in view of ensuring a representation of various trends, experiences and fields of specialty, all brought together by a same will to safeguard and promote human rights. Upon His appointment of the Commission's president and members on January 7, 2004, His Majesty the King delivered a grand speech, bestowing upon the Commission a historic role and significant responsibilities, as His Majesty deemed it equivalent to a Truth, Justice and Reconciliation Commission.

Reference 2 - 0.38% Coverage

The Commission was mandated to assess, research, investigate, arbitrate and make recommendations about the gross human rights violations that occurred between 1956 and the end of 1999. These violations include forced disappearances, arbitrary detention, torture, sexual abuse and deprivation from the right to life, as a result of unrestrained and inadequate use of state force and coerced exile. This mission's goal is to foster development and dialogue, and to create the grounds for national reconciliation that is crucial for a democratic transition in our country towards a state of justice and law, and for advancing the values and culture of citizenship and human rights.

Reference 3 - 0.20% Coverage

The Commission's truth-seeking mission further led it to conduct investigations, collect testimonies, examine official archives, as well as gather information and facts from various sources, in order to: • Determine the nature and scale of the violations, in light of the norms and principles of human rights, democracy and state of justice and law;

Reference 4 - 0.24% Coverage

The Commission prepared a final report presenting the conclusions of its research, investigations and analyses about the violations and their contexts, as well as its recommendations and suggestions to safeguard the memory and ensure the non-repetition of what happened, eradicate the violations' aftereffects, and restore and bolster trust in a state of law and the respect of human rights. Following is the executive summary :

Reference 5 - 0.44% Coverage

The lack of a clear definition in Moroccan law of the notion of forced disappearance, which is in fact a violation of all internationally-protected human rights, first being the right to life, has led to a proliferation of labels being used when discussing human rights issues in Morocco. These descriptions range from "those with an undetermined fate", "abducted with an undetermined fate", "abducted", etc., but the truth is that these descriptions are not specific to forced disappearances only as per the internationally acknowledged definition, but include other forms of deprivations than the right to live, as a result of public forces' excessive or inadequate use of power during social riots or as a result of torture and ill-treatment, or in the course of armed clashes.

Reference 6 - 0.27% Coverage

Taking into account that the period covered by the Equity and Reconciliation Commission is the longest compared to similar experiences (43 years), that the various crises of political violence have caused gross human rights violations, involving state actors and sometimes non-state actors too, and the lack of reliable records and academic studies covering specific periods in the contemporary history of Morocco, the Commission's truth-seeking mission took on various aspects.

Reference 7 - 0.80% Coverage

During the national debate on the issue of human rights, this notion was used to cover several categories of missing people. For the sake of more clarity, the Commission adopted a work methodology based on field investigation coupled with records-based research.

- Field investigation : The Commission visited the families of missing individuals and received them in its offices, to collect their testimonies, define their demands and explain its approach and methodology in handling this issue. It also held closed hearings with witnesses who had spent time with individuals considered missing. The Commission further carried out inspection visits to former detention centers and held hearings with former wardens who had practiced in these centers.

- Research and examination of records and documents : the Commission gathered and analyzed all the records made available by various local and international sources (lists, reports, etc.), and which, in one way or another, point to cases of disappearances (lists of local human rights groups, of Amnesty International, and of the UN Working Group on Enforced and Involuntary Disappearances). It also examined the answers presented by security forces and the Royal Armed Forces, as well as the documents that the International Commission of the Red Cross have regarding those individuals who went missing as a result of armed clashes in the Southern provinces.

Reference 8 - 0.15% Coverage

Having reached the end of its mandate, the Commission believes that a significant progress has been made in the period between January 2004 and November 2005 in finding the truth about the gross human rights violations Morocco has experienced in its past.

Reference 9 - 0.27% Coverage

- Severe human rights violations occurred during these events, mainly characterized by the abuse of many citizens of their right to live, including children, and individuals who did not participate in any way in these events;
- These abuses resulted from the disregard of international human rights principles related to the conditions set for the practice of force by public authorities. Indeed, public forces exerted inadequate and excessive force, sometimes leading to death;

Reference 10 - 0.15% Coverage

The Commission's mission represents an important step towards establishing the right to know the truth, by way of non-conventional methods. It has contributed to finding the truth about the gross human rights violations Morocco has experienced in its past.

Reference 11 - 0.25% Coverage

The concept of reparations represents all measures and processes aimed at establishing the rights of victims of human rights violations. These measures and processes generally assume various forms, whether in the classical form of financial compensation or other forms of reparations such as rehabilitation, reinsertion, restoration of dignity or of confiscated rights, and recuperating whatever victims of violations lost or missed.

Reference 12 - 0.44% Coverage

- The international law includes important principles and norms in various international and regional covenants related to human rights. These include clear clauses stipulating the right of victims of gross violations to bring forth their complaints before the national competent parties. In fact, certain covenants include clear clauses stipulating the right of victims to demand compensation and reparations;
- The Human Rights Committee as well as the other committees involved in this issue shed particular importance in their efforts made both at the judicial and theoretical levels. Thus, along with the political efforts that the committee aforementioned deployed, a document was adopted, stipulating the basic principles according to which victims of human rights

Reference 13 - 0.67% Coverage

One of the Commission's tasks, provided for in its statutes, is to draw a comprehensive assessment of the process of settling the past gross human rights violations, including an assessment of the former arbitration board. Thus, the Commission achieved the following:

- Study and analyze all the files that the arbitration board handled to settle the material and moral damage of victims and their right-holders, who suffered from forced disappearance and arbitrary detention. This included examining the decisions made by the board to compensate, disregard or cast as not falling under its jurisdiction. By this, the Commission formed a sensible opinion about the nature and quality of the efforts made by the former arbitration board;
- Take note of the former board's general approach, including the principles and rules it applied in view of assessing and determining the compensations to be made to the victims and their right-holders. In this context, the Commission prepared a document about the former arbitration board, which was used as a resource in assessing the national experience of settling past gross human rights violations. Furthermore, this document shed light on

Reference 14 - 0.44% Coverage

The Commission viewed the issue of financial compensation as one of the basic rights of victims of gross human rights violations. As such, it adopted the adequate principles and accounting units to ensure equality and solidarity among victims, and established therefore the bases for compensation which aimed mainly at granting compensation on the basis of the violations suffered. Moreover, consistent with its comprehensive approach, the Commission gave equal importance to the other issues related to reparations. Thus, it included other elements in its reparations program, such as medical and moral rehabilitation, social reinsertion and settling the employment problems, administrative and financial issues as well as settling legal issues and expropriation cases.

Reference 15 - 0.10% Coverage

- International standards of human rights, Morocco's international commitments, the lessons and experiences drawn from transitional justice processes around the world;

Reference 16 - 0.32% Coverage

In order to diagnose the state of the victims with possible physical or moral damage, the Commission examined the information contained in the medical documents contained in their files and prepared a preliminary report on the medical situation of the victims of grave human rights violations.

This report assesses the nature and level of the diseases inflicting the victims of human rights violations, and suggests alternatives and strategies for the permanent treatment of those suffering from diseases or disabilities, or for all the victims and their right-holders.

Reference 17 - 0.12% Coverage

The Commission further took care to involve non governmental organizations active in the sectors of human rights, local development, as well as other agencies and development organizations active in these regions.

Reference 18 - 0.23% Coverage

The reconciliation process in Morocco took off in the early 1990s, assuming multiple facets and covering various sectors. This process was grounded in the appeal of certain constitutional laws, reaching a peak with the 1996 constitutional reforms, which brought the opposition into the government and resulted in a consensus over a set of laws related to the state of institutions and human rights.

Reference 19 - 0.25% Coverage

Moreover, major institutional developments were achieved in order to advance and safeguard human rights. This started with the creation of the Human Rights Advisory Council and its development in the context of the Paris Principles. Other developments included the institution of administrative courts, the creation of the Royal Center for Amazight Language and Culture, as well as the Higher Council for Audio-Visual Communication.

Reference 20 - 0.23% Coverage

In the context of these political and institutional developments, the issue of human rights took a great leap forward at both an intellectual and cultural level. As a result, the legal process took act of the latest international principles and schools of thought on human rights laws as well as transitional justice processes across the world, in a bid to face Morocco's past gross human rights violations.

Reference 21 - 0.56% Coverage

means of dialogue, fostering the constituents of reconciliation, bolstering the democratic transition in our country based on a state of justice and law, and advancing the values and culture of citizenship and human rights". Based on the conviction that reconciliation is a continuous process, the Commission adopted an inclusive approach in all of its programs and activities, whereby it immediately sought to foster the right environment for free discussions and serious dialogue about the factors of reconciliation. It did this by holding several seminars, meetings and field visits covering almost all of the national

territory, coupled with a work methodology rooted in the close and continuous collaboration of the multiple actors brought together by a common understanding. This methodology contributed to better understand what happened with regards to the violations, flaws, and breaches and paves the way towards building a common memory, often lacking in times of repression.

Reference 22 - 0.40% Coverage

In an effort to bolster the process of reconciliation and communal memory-building, the Commission expanded the scope of beneficiaries from the reparations programs, by integrating regions in which residents felt they had been marginalized as some form of communal punishment, either because of specific past events that saw gross human rights violations, or because former secret detention centers were located there. As such, the communal reparations program was formulated as an effort to translate on the ground the spirit of positive citizenship and social solidarity and to bolster the judicial approach and participatory democracy in the socio-economic development plans being carried out in Morocco.

Reference 23 - 0.32% Coverage

Thus, the Commission gave a priority to the rehabilitation of victims of gross human rights violations, through rehabilitation and reinsertion programs, efforts to restore their dignity, through communal reparations empowering the society at both the local and national levels towards participating in the ongoing democratization of the country, to restore trust in a state of institutions and the rule of law, and to ensure their effective participation by way of a sense of citizenship that fosters social justice and the belief in a truly modern democratic society.

Reference 24 - 0.60% Coverage

Reconciliation is a crucial factor in guaranteeing the non-repetition of past events. As such, the Commission believes that the reform process initiated in the 1990s must carry on towards establishing the full respect of human rights in the law and by way of institutions and practices and building a state of law. This is essential for democracy to be real, not just a mere sequence of mechanisms and forms. The Justice and Reconciliation Commission was therefore tasked to carry out the truth-seeking mission and establish equity for victims of violations, in order to alleviate their sufferings, enable them to restore their dignity and sense of citizenship as well as contribute to the society's understanding of past events and pursue its efforts to foster human rights as one of the main bases for national solidarity and social cohesiveness. The Commission is convinced that this is all necessary to create the genuine conditions to overcome tension, mistrust and despair within the society and to avert the inclination to settle conflicts through violence.

Reference 25 - 0.30% Coverage

Moreover, these sessions convinced both the state and the society even more of the need to adopt and safeguard human rights. Thus, it became a deep-rooted conviction to work on decisively turning the page on the gross violations and ensuring their non-repetition, and this, by way of publicly and officially admitting the scope of these violations and the sufferings brought upon the victims, their families, relatives and acquaintances, as well as their psychological, moral and financial damage at both the local and national levels.

Reference 26 - 0.37% Coverage

In this context, the Commission members carried out field visits to the regions that suffered gross human rights violations in the past, in order to communicate directly with the victims and their families. These visits marked a crucial opportunity to hear what the victims have to say or to support them morally and socially, or still, to complete the accounts already existing in their files. Furthermore, the Commission set up centers, in cooperation with the Ministry of Interior, to receive applicants and their right-holders and obtain their testimonies, in Azilal and Beni Mellal, and in the Southern and Northern provinces of the Kingdom.

Reference 27 - 0.45% Coverage

The Commission firmly believes that turning the page on the past and building a modern and democratic state and society in which rights and duties are respected is first and foremost a social issue that engages all Moroccans, either through their social, political or communal channels. As such, the Commission organized a series of consultative and academic meetings in a number of universities and with political, union and communal institutions. It also relied on the national cognitive and scientific expertise to carry out studies and projects necessary for its final report, and related to issues such as forced disappearances, arbitrary detention, education in human rights, social gender and violations, as well as to supplement the Commission's recommendations and suggestions.

Reference 28 - 0.08% Coverage

Human rights and civil society activists participated in these events, as well as numerous intellectuals, academic researchers and practitioners.

Reference 29 - 0.59% Coverage

These sessions sought to include the general public in an open and responsible debate about the political, intellectual and historical aspects of the human rights violations that took place in Morocco since the independence, and about the causes that led to these violations and the repercussions they had on the country's political development. They further aspired to develop programs and practical plans towards establishing a state of law and institutions that safeguard freedoms and ensure the non-repetition of violations.

Cognitive and field experts participated in these sessions, as well as individuals active in the civil and political societies. The Commission deployed great efforts to analyze the political, economic and social contexts of the violations, and to search for effective means to overcome the sanctioning tools violating human rights. The sessions concluded with recommendations for institutional, legal and educational reforms that guarantee the respect of freedoms and the establishment of a state of law.

Reference 30 - 0.19% Coverage

In the drafting of its recommendations, the Commission based itself on the following: • International norms related to human rights and compared experiences of transitional justice, as well as efforts achieved in the realm of human rights and democracy in the context of the United Nations or international parliamentary commissions;

Reference 31 - 0.30% Coverage

- Studies and academic research addressing the legislative and organizational bodies and texts related to human rights, highlighting those that potentially hinder or, on the contrary, impact positively the respect of human rights. This enabled the Commission to determine those texts that should be strengthened and those that should be cancelled, or again those that need to be completed or enacted as guarantees and norms;
- Studies allowing to determine the prerogatives and responsibilities of human rights activists;

Reference 32 - 0.45% Coverage

In order to guarantee the non-repetition of the gross human rights violations that took place in Morocco and in order to advance the ongoing reforms, the Justice and Reconciliation Commission makes a set of recommendations about institutional reforms and a national strategy to struggle against impunity and the follow-up of the implementation of the recommendations.

1- Consolidating constitutional guarantees of human rights, namely by ascribing to the principle of the primacy of international law on human rights over internal law, and the presumption of innocence and the right to a fair trial. The Commission also recommends reinforcing the principle of separation of powers, and prohibiting constitutionally any interference by the executive power in the functioning of the judiciary power.

Reference 33 - 0.17% Coverage

The Commission believes that this strategy needs to be grounded in the rules of international law on human rights, by making the penal law consistent with Morocco's international commitments, by: • Incorporating and defining the responsibility and sentences as stipulated in international tools;

Reference 34 - 0.15% Coverage

- Establishing specific requirements for the protection of victims of gross human rights violations and their right-holders, as for example during hearings, by ensuring means of recourse for civilian parties to appeal for justice for rehabilitation and reparations.

Reference 35 - 0.10% Coverage

C- Readapting the penal policy and legislation requires the strengthening of the legal and procedural guarantees against human rights violations and the implementation of the

Reference 36 - 0.25% Coverage

recommendations that were presented at the national forum on penal policy held in Meknes in 2004. It also necessitates to develop a clear and precise definition of violence against women, in conformity with international norms, and put into action the recommendations of the Human Rights Advisory Council specific to prisons (expand the scope of jurisdiction of the judge in charge of carrying out sentences, adopting alternative sanctions, etc.).

Reference 37 - 0.27% Coverage

Taking into account that the period covered by the Equity and Reconciliation Commission is the longest compared to similar experiences (43 years), that the various crises of political violence have caused gross

human rights violations, involving state actors and sometimes non-state actors too, and the lack of reliable records and academic studies covering specific periods in the contemporary history of Morocco, the Commission's truth-seeking mission took on various aspects.

Reference 38 - 0.15% Coverage

During the national debate on the issue of human rights, this notion was used to cover several categories of missing people. For the sake of more clarity, the Commission adopted a work methodology based on field investigation coupled with records-based research.

Reference 39 - 0.37% Coverage

- Research and examination of records and documents : the Commission gathered and analyzed all the records made available by various local and international sources (lists, reports, etc.), and which, in one way or another, point to cases of disappearances (lists of local human rights groups, of Amnesty International, and of the UN Working Group on Enforced and Involuntary Disappearances). It also examined the answers presented by security forces and the Royal Armed Forces, as well as the documents that the International Commission of the Red Cross have regarding those individuals who went missing as a result of armed clashes in the Southern provinces.

Reference 40 - 0.15% Coverage

Having reached the end of its mandate, the Commission believes that a significant progress has been made in the period between January 2004 and November 2005 in finding the truth about the gross human rights violations Morocco has experienced in its past.

Reference 41 - 0.14% Coverage

The IER based its decisions on six criteria of experience, treating all victims with equal respect: • Deprivation of liberty; • Specificity of forced disappearance (as a complex violation of the very basic human rights mainly the right to life)

Reference 42 - 0.11% Coverage

In all of its decisions, the IER paid specific attention to gender, taking into consideration the specificity of suffering endured by women in their experience with grave violations of human rights.

Reference 43 - 0.37% Coverage

During its mandate the IER opened a medical unit to take care of victims needing immediate/urgent care. Moreover, in the course of its work, the IER analyzed 9992 files of individuals who declared that they suffer physical or psychological illness caused by the grave human rights violations they experienced. As a result, the IER recommended the following: • The extension of obligatory health benefit to all victims and their relatives • The immediate care of close to 50 victims suffering from severe or chronic after-effects of violations

- The creation of a permanent mechanism to give medical assistance to victims of grave violations of human rights

Reference 44 - 0.45% Coverage

In order to guarantee the non-repetition of the gross human rights violations that took place in Morocco and in order to advance the ongoing reforms, the IER is making a series of recommendations concerning institutional reforms, a national strategy for the fight against impunity, and the necessary follow-up stages for implementing the recommendations.

1- Consolidating constitutional guarantees to human rights.

Namely by ascribing to the principle of the primacy of international law on human rights over domestic law, and the presumption of innocence and the right to a fair trial, the Commission recommends the reinforcement of the principle of separation of powers, and the constitutional prohibition of any interference by the executive power in the functioning of the judiciary power.

Reference 45 - 0.17% Coverage

The Commission believes that this strategy needs to be grounded in the rules of international law on human rights, making the penal code consistent with Morocco's international commitments, by : • Incorporating and defining the responsibility and sentences as stipulated in international instruments;

Reference 46 - 0.15% Coverage

- To establish specific requirements for the protection of victims of gross human rights violations and their right-holders, as for example during hearings, by ensuring means of recourse for civil parties to appeal for justice through rehabilitation and reparations.

Reference 47 - 0.20% Coverage

C- Finalizing new legislation on the penal code and criminal system requires the strengthening of the legal and procedural guarantees against human rights violations and the implementation of the recommendations presented at the national forum on penal policies held in Meknes in 2004. It also necessitates developing a clear and precise definition of

Reference 48 - 0.17% Coverage

violence against women, in conformity with international norms, and put into action the recommendations of the Human Rights Advisory Council (CCDH of Morocco) specific to prisons (expanding the scope of jurisdiction of the judge in charge of carrying out sentences, adopting alternative sanctions, etc.).

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Reference 6 - 0.14% Coverage

The Equity and Reconciliation Commission was established at a critical and delicate stage in the process of development that Morocco went through at the beginning of the 1990s following the political changes that were faced by the state and the political and social components of society. As an instrument of transitional justice, it was one of the fruits of this gradual, difficult and complex development towards solving the problems and issues linked to the past grave violations of human rights, and a product of interchanges and discussions within the political class and among the forces active in civil society, to find the best ways to settle the conflicts of the past and solve them in a just and equitable manner.

Reference 7 - 0.48% Coverage

Thus, the establishment of the Equity and Reconciliation Commission is part of Morocco's path to the settlement of its past of grave violations of human rights that has been pursued since the beginning of the 1990s. One of the main characteristics of this process has been to make a complete break with these violations, and to lay the foundations for a period of radical new beginnings, and to adopt a gradual process of democratization and the construction of a state based on law and institutions. The aim of all this is to ensure that the values and the culture of human rights prevail, and that the pillars of the

Moroccan state continue while developing a special model of democratic transition having the strong support of the highest authorities in the land.

It is worth pointing out here that in his report submitted to the Security Council on The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies (August 2004) the General Secretary of the United Nations referred to the Moroccan experience as one of the five most distinguished of over thirty experiences. Moreover, the inspiration of the directives of His Majesty and the national accumulation of experience in the area of human rights enabled the Commission to draw up statutes, programmes and methods of work to match the country's ambitions to make a break with the excesses of the past and to give positive closure to the past of grave violations of human rights.

The Equity and Reconciliation Commission has helped to gain normative status for the Moroccan experience of transitional justice through strategic initiatives and goals and a work plan to achieve them. It has concentrated on uncovering and establishing the truth about all the grave violations that our country experienced during the relatively long period stretching from the beginning of independence to the summer of 1999. This mission has required the Commission to establish the contexts of the events to which those violations were linked and the legal and institutional development of human rights issues during that period. It has also adopted its own philosophy and a comprehensive approach in dealing with reparation for injuries and justice for victims, through a policy and programmes characterized by more than just added value. With a view to consolidating the current reforms and ensuring non-repetition, the Commission has drawn up recommendations and proposals in the areas of democratization and the construction of a state based on institutions, respect for human rights and the rule of law.

Reference 8 - 0.26% Coverage

The Equity and Reconciliation Commission was established on the basis of a royal decision dated 6 June 2003 ratifying the recommendation of the Advisory Council on Human Rights issued by virtue of Article 7 of Sherifian Decree No. 1.00.350 relating to the reorganization of the Council.

By virtue of the royal approbation, the Commission is composed of a chairman and sixteen members, half of them selected from members of the Advisory Council on Human Rights, and half selected from outside it. The purpose of this was to guarantee the representation of a wide variety of viewpoints, experience and specialities, all united in the purpose of protecting and promoting human rights. When its chairman and members were installed by His Majesty the King on 7 January 2004, he delivered a speech on the occasion granting the Commission a historical dimension and entrusted it with great responsibilities by characterizing it as a Truth and Reconciliation Commission. In order to strengthen its independence, the Commission drew up its statute, which is a foundational document including a detailed description of the tasks entrusted to it, a definition of the violations falling within its remit, and the methods to be used in organizing and carrying out its work. This statute was ratified by virtue of Sherifian Dahir No. 1.04.42 issued on 10 April 2004.

Reference 9 - 0.06% Coverage

2. The subject Matter competence The subject matter competence of the Commission is limited to assessment, inquiry, investigation, arbitration and formulating proposals concerning the grave violations of human rights that occurred in the period defined by the temporal competence, with the purpose of developing

Reference 10 - 0.05% Coverage

and enriching the culture of dialogue, and establishing the components of reconciliation in order to support the democratic transformation of our country and the construction of a state based on the rule of law, and to spread the values and culture of citizenship and human rights.

Reference 11 - 0.06% Coverage

The Commission undertook a comprehensive assessment of the process of settlement of the enforced disappearance and arbitrary detention file, in consultation with the government, the public and administrative authorities involved, human rights organizations and the victims and their families and representatives.

Reference 12 - 0.17% Coverage

The Commission devoted itself to carrying out investigations, receiving communications, perusing the official archives and obtaining any information and data made available by the bodies involved with the purpose of uncovering the truth, in order:

- To establish the nature and the gravity of the violations of the past, in their contexts and in the light of the standards and values of human rights, democratic principles and the rule of law.
- To continue to make inquiries regarding the cases of enforced disappearance whose fate is not yet known, and to make every effort to investigate facts that have not yet been brought to light, to reveal the fate of those who have disappeared, and to find suitable solutions for those whose deaths are proved.
- To reveal the degree of responsibility of state or other apparatuses for the violations and the events object of its investigations.

Reference 13 - 0.24% Coverage

violations and their contexts, and to submit recommendations and proposals intended to preserve the memory, to ensure non-repetition, to erase the effects of the violations and to restore and strengthen trust in the rule of law and respect for human rights.

3. Violations falling within the remit of the commission The violations falling within the remit of the Commission are enforced disappearance and arbitrary detention insofar as they are types of violations of civil and political rights characterized by their intensified and systematic nature. According to the statute of the Commission, enforced disappearance is defined as "the abduction of one or more persons, or their arrest and restraint in secret locations, against their will and with deprivation of freedom, without any right, by public servants or individuals or groups acting in the name of the state, or not admitting to that, and the refusal to reveal their fate, which deprives those individuals of all legal protection". Arbitrary detention is defined as "any restraint or detention contrary to the law that violates the principles of basic human rights and especially the right of individuals to freedom, life, and physical safety, for engaging in political, trade union or association activities".

Reference 14 - 0.15% Coverage

The Commission adopted a flexible method of recruitment and appointment within the administrative units, according to the development of the different stages of the work. Thus it recruited administrative staff and personnel with different specializations to monitor and implement its programmes. It also depended on well-resourced full-time staff put at its disposal by the Advisory Council on Human Rights and some departments of the government. The inclusion of a significant number of young people in its human resources enabled them to become involved in the project and the issues of human rights in

general. The Commission also sought the assistance of Moroccan experts with different specializations to carry out studies, prepare reports and submit consultation documents, whenever these were needed.

Reference 15 - 0.02% Coverage

1. Establishing the nature and the Gravity of past Violations of human rights

Reference 16 - 0.32% Coverage

To achieve those goals, the Commission organized a series of activities aimed basically at: • Uncovering the truth about the past grave violations of human rights in such a way as to respond to the demands of their victims; • Helping to ensure the right of society, both individuals and groups, to know what happened; • Ensuring that the state acknowledges and admits its responsibility for what happened. The tasks and activities organized in this connection can be summarized as follows: • To make enquiries and investigations in order to establish whether or not the grave violations constituted a systematic pattern of violations of human rights by listening to the victims and their families and those entrusted with enforcing the law, and carrying out in situ investigations concerning centres and places where the violations took place; • Negotiating and consulting concerning cases of individuals whose deaths are established, and completing the administrative and judicial procedures necessary to pinpoint their burial places and the method of dealing with their rightful claimants and families, as well as concerning those whose fates are unknown, in order to discover their fate; • Determining the nature, the causes and the degree of gravity of the violations, by investigating the circumstances, factors, context and motives that led to them being committed; and establishing the degree of responsibility of apparatuses, authorities, institutions and organizations that may be behind their being committed; • Gathering information and receiving communications from different sources in order to establish the identities and fates of the victims and the harm that they have suffered;

Reference 17 - 0.10% Coverage

• Analyzing the reports and studies that are available, and the official archives (judicial transcripts, judgements issued, detention registers ...), as well as analyzing the cases that are well known and do not require in situ investigation as much as they need study of the information available; • Determining the burial places of the victims who died in the centres of enforced disappearance or arbitrary detention, or during civil disturbances, and informing the families of the victims, human rights organizations, and national public opinion.

Reference 18 - 0.12% Coverage

Thus the realization of this goal led to the activities of the Commission not being confined just to completing a process of financial compensation and reparation for remaining injuries, according to the provisions of its statute. Rather, it went beyond that to play a mediating role in specific fields of reparation for injuries, like urgent health needs or defining economic and social development programmes which may help, in some regions, to erase the effects of past violations of human rights and to bring justice to victims and regions. The basic tasks and activities of the Commission to achieve this goal can be represented as follows:

Reference 19 - 0.27% Coverage

- Conducting studies and making reports concerning the approach of the Commission in the field of reparation for injuries;
- Analyzing and categorizing the petitions presented to the Commission, and harmonizing the violations that have been admitted with the provisions of its statute, the international standards of human rights, and the relevant national legislation;
- Preparing the files that have been opened on the basis of those requests in terms of the information, the details, and the documents necessary in order to make the appropriate final decision;
- Issuing arbitration rulings concerning the requests for financial compensation for injuries suffered by victims or by their rightful claimants;
- Formulating proposals and recommendations to solve cases of psychological and physical rehabilitation and social reinsertion, and to solve the remaining administrative, occupational and legal problems, and issues relating to dispossession;
- Playing a mediating role between the public authorities, at both the central and local levels, and local development associations, in order to take into account the situation following the violations and the injuries resulting from them in programmes of economic and social development devoted to the regions damaged as a result of the occurrence of the grave violations;
- Preparing a field study concerning gender for samples of women who were victims of grave violations of human rights;

Reference 20 - 0.17% Coverage

3. preparing the Final report and the recommendations The statute entrusts the Commission with the task of preparing a final report including the results and the main conclusions of its work relating to the tasks entrusted to it, and the recommendations and proposals meant to ensure non-repetition and to erase the effects of the violations and restore and strengthen trust in the rule of law. For this purpose, the Commission has been careful, ever since its inception, to conduct the studies and research and prepare the reports that may help it to analyze the events and the contexts relating to the grave violations of human rights falling within the remit of the Commission. In so doing, the Commission aims to throw light on what happened and open ways and provide opportunities for research by experts and specialists in human rights issues, political science, law and history, in the post-Commission phase.

Reference 21 - 0.03% Coverage

- Formulating recommendations and proposals meant to restore and strengthen trust in the rule of law and respect for human rights.

Reference 22 - 0.07% Coverage

- Helping to spread the values and culture of human rights and citizenship;
- Promoting the culture of dialogue between society (victims, families, associations, universities) and the state;
- Establishing the ingredients of reconciliation between victims and their past, by making their voices and their sufferings heard;
- Establishing a centre or centres for preserving the memory.

Reference 23 - 0.03% Coverage

- Sponsoring numerous activities organized on the subject of human rights by national associations and institutions concerned with development and education;

Reference 24 - 0.24% Coverage

• Educational and cultural reforms; • Legislative, executive and judicial reforms; - Initiating a debate concerning the archive in Morocco; - Creating a written and audio-visual archive of some of the subjects and places related to the grave violations of human rights, which may help to preserve the memory.

V. some appropriate Tools One of the main tasks undertaken by the Commission has been to assemble and document an archive from numerous and varied sources and of different and varied types. This led it to help in filling the gaps that are apparent in the different archives relating to the grave violations of human rights falling within its remit. For this reason it has sought to organize and maintain it in accordance with a special system for archiving and documentation, on the one hand, and an information system depending on a data principle of the utmost importance in storage, ordering and analysis, on the other hand. In order to ensure the involvement of all sectors of society in monitoring its work and interacting with it, the Commission has been careful to draw up a plan for communication with the victims or their families and representatives, and with the audio-visual media and the press, as well as the other components of civil society.

Reference 25 - 0.05% Coverage

listening and positive interaction and involvement with the parties to its tasks, including victims and their rightful claimants (both individuals and groups), officials, political actors, human rights organizations, academic circles, media institutions, international partners and others.

Reference 26 - 0.41% Coverage

The violations are linked to historical events that are not sufficiently documented to allow detailed and trustworthy readings. All that is available concerning these events are incomplete documents and testimonies, and only a few limited studies have been produced about them, most of them written by foreigners. Although these studies are documented concerning events that continued to be considered politically taboo for decades, the conclusions of these studies favoured the theoretical context at the expense of the data available, which it is true to say were meagre. They therefore require constant revision in the light of new data that appear. Since the 1990s, various writings have appeared about those events that have presented much information in the form of autobiographies, testimonies or political and historical analyses. These new publications have helped to throw light on previously unknown or ignored aspects. They have helped to some extent to make up for the lack of documentation, which will nevertheless always remain in need of being supplemented. However, using these writings to understand the contexts of the past requires awareness of the considerations that weighed upon the people who wrote them, and the subjective choices which entered into the process of selecting the events and reconstructing, arranging and interpreting the facts. In addition to that, there is the deplorable and confusing state of the public archives in Morocco, the contents of which, as well as the type, are unknown. Because of this, it is difficult to judge their value through the approximate inventory available for them, as sources of documentation for the modern political history of Morocco, especially the modern history of human rights. On this basis, the Commission's goals of defining the contexts of the violations and drawing out lessons from them have been achieved on the basis of incomplete information, and with the awareness that the production of data is a process that is continually developing, and that it too is subject to variable historical and political contexts and to the subjective considerations of those who produce it.

Reference 27 - 0.25% Coverage

ii. The legal context The grave violations of human rights committed during the period of the Commission's remit coincided with and accompanied a retreat from the legal guarantees for basic rights and freedoms.

1. basic rights and Freedoms in the Moroccan constitution The constitution of 1962 granted basic rights and freedoms to individuals and groups. The preamble states that Morocco subscribes to the "principles and obligations" arising from the charters of international bodies. Its provisions also stipulate the protection of civil and political rights, especially the freedoms of opinion, expression, assembly and movement, as well as the inviolability of the home and the confidentiality of correspondence. It also contains the right to strike, while referring this to a regulatory law that has not been issued until now to define its conditions and the ways in which it may be exercised. By virtue of the amendments introduced by the 1992 constitution, the preamble now began to affirm the attachment of the Kingdom of Morocco "to Human Rights as they are universally recognized". This means the enshrinement of Morocco's commitment to international norms regarding human rights, and its commitment to operate according to the standards relating to them, by completing its ratification of the relevant treaties and relevant agreements.

Reference 28 - 0.03% Coverage

The judiciary plays a decisive role in confronting grave violations of human rights, in that it is entrusted with the application of the legal provisions guaranteeing the fundamental

Reference 29 - 0.29% Coverage

Meanwhile, the amendment introduced by Dahir 13 of November 1963 extended the period of prescription for public prosecutions with regard to press misdemeanours from five months to a year. One of the retreats introduced by the amendments of the 1973 Dahir was to increase the severity of freedom-depriving penalties and raise the amounts of fines for misdemeanours relating to the exercise of press freedom, in addition to introducing the possibility of the newspaper being suspended on the initiative of the crown prosecutor in case the fine imposed was not paid within a period of fifteen days from the date of the judgement. In cases of conviction for a number of misdemeanours, the court could order the suspension of publication for a period of three months. There is an important legal guarantee of the freedom of expression and the press that was suppressed when the code of penal procedure was reviewed on 31 December 1991, the first time this had been done since 1974. While the draft proposed by the Advisory Council on Human Rights sought to review police custody periods on the one hand and strengthen defence rights when the accused appears before the public prosecutor on the other hand, the final paragraph of Article 76, which excludes prosecutions relating to press misdemeanours, disappeared from the government draft. As a result of this, it became possible for the crown prosecutor to order journalists to be placed under preventive detention and prosecuted within the framework of what is called flagrante delicto procedure.

Reference 30 - 0.42% Coverage

The first reforms relating to human rights and public freedoms that were implemented in the period after independence are the following: - The creation of the National Advisory Council by virtue of the Royal Decree of 17 August 1957, that is less than a year after independence. It mainly consisted of representatives of the Istiqlal Party (P.I.) and the Democratic and Independence Party (P.D.I.), the only trade union at that time and economic and community bodies. It is a consultative council under the authority of His Majesty the King entrusted with the prerogative of questioning members of the

government concerning the state budget and all political, economic and social matters. - The creation of a supreme council by virtue of Dahir 27 of September 1957, which was entrusted with the following tasks:

- The supervision of judicial work and the application of the law;
- The examination of cases where final rulings have been handed down by the common law courts or the modern courts;
- The examination of pleas for annulment because of abuse of authority presented against administrative decisions;
- The issue of the Dahir of July 1957 by virtue of which trade union freedoms were regulated;
- The royal charter that announced in terms of principle the establishment of democracy, the practice of basic freedoms and the enjoyment of human rights (the royal speech of 2 May 1958);
- The issue of three dahirs dated 15 November 1958, which form a dahir law establishing public freedoms, a sort of code of public liberties including fundamental guarantees relating to rights of public assembly, associations and the press;
- The issue of the Dahir of 30 December 1958 laying down the statute of the judiciary, which included general provisions relating to the regulation of the judiciary, the rights and duties of judges, the disciplinary procedure that they should be subject to and their departure from the profession. The task of implementing these rights and duties was entrusted to the Supreme Council of the Magistracy, which had to work under the orders of the prime minister;
- The issue of the Code of Penal Procedure on 10 February 1959, which introduced fundamental guarantees of individual freedom;

Reference 31 - 0.35% Coverage

The parliamentary investigation committees introduced at the initiative of the King or at the request of the majority of members of the House of Representatives, can be charged with gathering essential information concerning specific events or concerning probable violation of rights and freedoms. The fact that the declaration of a state of emergency does not lead to the dissolution of parliament (Article 35) makes the political system in principle enjoy democratic continuity. The preservation of the continuity of parliament is a positive influence with regard to the rights and freedoms that are liable to be weakened during a state of emergency. Moreover, the control of the constitutionality of laws, which is, in the end, an unavoidable element in order to guarantee the harmony of the legal system, also bears, in addition to that, an outstanding importance with regard to the promotion of legal guarantees for basic rights and freedoms. It is obvious that the creation by the 1992 constitution of the Constitutional Council represents a great gain in this respect. With regard to the 1992 constitution's enshrinement of human rights in its preamble, this monitoring led to the promotion and acceleration of the process of bringing national legislation into conformity with international standards of human rights. In addition to the control of the constitutionality of laws which has, in the case of organic laws, to be carried out before the laws are ratified, the mandate of the Council has the potential to be broadened to some extent. In addition to the King, the Prime Minister and the president of parliament, representatives of the nation may avail themselves of this right. However, we cannot but notice that resort to the control of the constitutionality of laws remains, apart from the organic laws which are enunciated limitatively, very circumscribed.

Reference 32 - 0.28% Coverage

1. Ways of combating Violations: the Main actors The role played by political and civil society in confronting violations is characterized by continuous resistance and the strategic transformations experienced by this resistance. This resistance adapts itself in different ways according to the laws in force, or to challenge these laws. Similarly, the multi-partism that Morocco had adopted played a fundamental role in guaranteeing the continuity of this resistance and ensuring that it took many forms. By virtue of this multi-partism, the political parties and movements of the opposition, and the professional, and civil rights organizations linked to them, played a leading role in publicizing and criticizing the violations, in the knowledge that some members of those parties and currents were among the victims of the

violations. The resistance to the grave violations of human rights took varied forms and used diverse means to expose and criticize them, through the legally permitted newspapers, or through secret pamphlets, or through trials in cases of a political character, or through organizing demonstrations and strikes, or on the occasion of referenda on constitutions and legislative, local and professional elections by voting or boycotting the ballot. This resistance also appeared in other forms including different literary and artistic productions by artists and people of culture in the form of writings, plays, poetry, and popular oral arts.

Reference 33 - 0.52% Coverage

- The first option linked dealing with the violations of human rights with the necessity of comprehensive political change, starting by amending the constitution again to separate the executive branch from the legislative branch as a basic condition of any real reform. Although throughout this period demands surfaced for sectoral reforms in numerous fields linked to human rights, like the judiciary, the press, criminal law, education, and public freedoms, these demands were considered as part of the comprehensive strategic option;
- The second option, however, which grew stronger from the end of the 1980s, is distinct from the first option in focusing on aspects linked with human rights as a strategic priority preceding major constitutional changes.

3. combating Violations in the context of the struggle for power The demand for amendment of the constitution formed a major field of struggle between the state and the opposition parties, which called for a boycott of the three draft constitutions that were put to the ballot. Unanimity among the main political parties only occurred over the constitutional amendments of 1996. The second area is represented on the occasion of local or parliamentary elections, when the opposition criticized the lack of any guarantee of the freedom or the fairness of the vote. The opposition movement embraced political parties, trade unions and professional and cultural associations, human rights associations, professional organizations, and the Bar Association of Morocco and the National Union of Moroccan Students. The third field for this political struggle appears in the opposition to the policies pursued by the state in the economic and social fields, and in its foreign relations. The opposition considered that the policies pursued only reflected the interests of the minority that the state represented, and that they were contrary to the interests of the broad swathes of society in whose name the opposition spoke, which the state deprived of free representation in the political institutions by failing to hold fair elections. In this confrontation, the opposition employed diverse means of protest, opposition and criticism, and also used the national and international media. It also organized gatherings, strikes and demonstrations. A number of cultural figures and artists contributed through various means of intellectual and creative expression out of solidarity or compassion with the opposition. Thus, the demand for the guarantee of freedoms and rights and the criticism of the violations was a means by which the opposition could expose the inability of the authority to enter into free and democratic political competition within the framework of the institutions and laws in place.

Reference 34 - 0.34% Coverage

4. human rights as a strategic option to oppose Violations This human rights option is characterized by its adoption of human rights as a priority, and by separating the defence of these rights from the struggle over the division of power that had dominated the Moroccan political arena since independence. The first rudiments of this approach appeared in the 1970s with the emergence of associations specializing in the defence of victims of state violence and cases relating to human rights. Thus, the Moroccan League for the Defence of Human Rights (L.M.D.D.H.) and the Moroccan Association for Human Rights (A.M.D.H.) were launched in the context of a human rights dynamic that would shortly be consolidated with the birth of the Moroccan Human Rights Organization (O.M.D.H.) and the Moroccan Forum for Truth and Justice

(F.M.V.J.). In addition, a number of professional associations adopted human rights among their demands, and played important roles in publicizing the violations practised by the state, and in disseminating human rights cases. Congresses of the Moroccan Bar Association continued, since its founding in 1962, to be considered as an outstanding opportunity to bring up and criticize human rights violations and to present demands regarding the development of these rights in terms of texts and practice. The national debate on human rights, the first of its kind, which was organized by the association in the city of Oujda in December 1987, was able to undertake a developed analysis of human rights violations and the relationship of human rights with the contexts of this political stage. The first buds of the movement of families and relatives of political detainees appeared from the mid 1970s and then blossomed gradually to include families of the abducted and people whose fate is unknown.

Reference 35 - 0.28% Coverage

This trend was to be characterized by the appearance of a new political discourse springing from the emphasis on the priority in principle of human rights demands, and pushing in the direction of the independence of negotiations over these rights from conditions of political participation. It also threw up actors who reflected a new political culture characterized by its prioritization of the human rights dimension, its utilization of human rights concepts and terminology, and its pragmatic approach in moving gradually towards its goals. By focusing on the priority of human rights, this human rights trend helped to establish the shared conviction of the possibility of achieving gradual reforms in the context of the political dynamic that the country had been experiencing since the end of the 1980s, which coincided with the momentous political and intellectual transformation that the world was going through.

5. The role of Women in combating Gross Violations of human rights

Women were primary players in combating the gross violations of human rights committed in the past. They assumed vital roles in exposing them and combating them, and mobilizing against them, and in maintaining the cohesion of their families and the morale of victims who were their relatives. Thus they made a major contribution to our modern history and to the process of dealing with the file of the violations of the past. We can examine their role in combating these violations on the following levels:

Reference 36 - 0.24% Coverage

The Movement of Families of Political Detainees played a leading role in raising the profile of the file of grave violations of human rights. It was composed basically of mothers, wives and sisters of detainees, both men and women. They mobilized continually, to criticize the violations and to demand the right of their sons and daughters to receive a free trial and to have their situation admitted as political detainees, to have their conditions improved, and to be set free, as well as to demand that the fate of those of unknown fate be revealed. Thus they organized protest sit-ins and vigils, and brought pleas before the bodies responsible. They also drummed up support for their demands, and the battles of their detained relatives, especially during the hunger strikes, in communication with the political parties, international and national human rights organizations after they had been founded, and with the media. Because of their actions, they were liable to detention, assault and abuse. The families movement formed spontaneously, as a solidarity network between the families to facilitate accommodation and transport, and to provide supplies and support for the detained. It gradually developed its strategies to mobilize, protest, and pressurize, and to

Reference 37 - 0.13% Coverage

combat the attempts at repression that the women were the target of. It is worth pointing out that most of the mothers and some of the sisters were illiterate and unpoliticized. In fact, some of them had not left their villages or their neighbourhoods, and they had never set foot in an office before. Some of them only spoke Tamazight. But they surmounted the barriers and overcame all the obstacles. They seized their freedom of movement and obtained the courage to resist and to express themselves. They changed into women different from what they had been before, into human rights activists, and to them go the honour and the precedence in raising the file of grave violations of human rights.

Reference 38 - 0.13% Coverage

Similarly, women assumed an important role in the Movement of Families of the Disappeared, and in the Moroccan Forum for Truth and Justice, and participated in truth caravans and sit-ins, giving testimonies and mobilizing in order to reveal the fate of the disappeared, and dealing with the file of grave violations of human rights. Outside this group dynamic, women undertook audacious individual initiatives to search for their disappeared loved ones. Some reached Tazmamart despite all the difficulties, and others made the connection between families and relatives of those restrained in secret detention centres, and smuggled information about their situation to human rights organizations.

Reference 39 - 0.25% Coverage

Enforced disappearance is one of the most abominable violations of human rights. It is a combination of violations that threatens a large number of internationally protected basic rights. What makes it graver is that the harm resulting from it goes beyond the individuals whose rights have been violated directly to threaten their families and friends and indeed the whole of society. Because the phenomenon of "enforced disappearance" is relatively new, general conventions concerning human rights, on both the international and regional levels, do not include any express provisions about the right not to be exposed to this violation. However, with the rampant spread of the practice of enforced disappearance in many countries, the international community has become seriously concerned about dealing with it, through establishing binding legal mechanisms to protect and guarantee the right not to be exposed to this violation. In addition, a number of countries, which have experienced the phenomenon of enforced disappearance in a widespread and systematic way, have enacted legislation aiming at criminalizing enforced disappearance on the basis of the provisions of the Declaration on the Protection of all Persons from Enforced Disappearance and the contents of the recommendations of the UN work group involved.

Reference 40 - 0.15% Coverage

The provisions of International Human Rights Law relating to protection against exposure to enforced disappearance and to the guarantee of the rights of individuals who are subject to this practice - or their families - are scattered among a group of international instruments relating to human rights. The International Covenant on Civil and Political Rights includes a group of basic rights that are violated whenever the individual is subjected to enforced disappearance. Among them are the following main rights: the right to life; the right not to be exposed to torture and ill-treatment; the right to legal personality; freedom of opinion, expression and belief, etc. In addition, the efforts of the committee involved with human rights made a great effort to ban enforced disappearance.

Reference 41 - 0.17% Coverage

Finally, the jurisprudence of the Human Rights Committee, in addition to the continuous political efforts of the said committee, led to the drawing up and the ratification of a special international convention concerned with protection against enforced disappearance. It is worth mentioning that International Human Rights Law has been consolidated with a number of legally non-binding texts. This constitutes a beginning in guaranteeing the protection of a number of rights that are coming into existence in the form of general directive principles including the right to know. These texts have helped to consolidate the process of investigating and finding out the truth about the grave violations committed during the previous period. These directives are rooted in the context of the experience of the truth and reconciliation committees in the framework of what has come to be known as transitional justice.

Reference 42 - 0.07% Coverage

2. The Mandate of the Equity and reconciliation commission The statute of the Equity and Reconciliation Commission defines its mission as uncovering the truth about the gross violations of human rights committed in the past, including the facts about them, their contexts and the responsibility of those who participated in them. It empowered them:

Reference 43 - 0.18% Coverage

- To establish the type and degree of gravity of those violations, by analyzing them in the framework of the contexts in which they were committed and in the light of the standards and values of human rights, the principles of democracy and the rule of law. This was to be done by carrying out investigations, receiving communications, and perusing the official archives and obtaining any information and data made available by the bodies involved with the purpose of uncovering the truth;
- To continue to make enquiries regarding the cases of enforced disappearance whose fate is not yet known, and to make every effort to investigate facts that have not yet been brought to light, to discover the fate of those who have disappeared, and to find suitable solutions for those whose deaths are proved;
- To reveal the degree of responsibility of state or other apparatuses for the violations and the events object of its investigations.

Reference 44 - 0.07% Coverage

3. Methods of Work and Means of Enquiry and investigation In its investigations concerning the grave violations of human rights, the Commission adopted an approach based on the involvement of all those having an interest in this matter, and especially former victims or their families. The Commission's methods depended on the following basic elements:

Reference 45 - 0.14% Coverage

Before beginning to investigate the file of persons of unknown fate, the Commission listed all sources of information, which enabled it to prepare reference lists by depending on:

- Reports of national non-governmental organizations involved with human rights;
- Reports and memoranda of the Advisory Council on Human Rights;
- Rulings issued by the former Arbitration Commission and the relevant files;
- Reports and rulings of international bodies and organizations involved in human rights that were relevant to the subject;
- Reports of the UN work group involved with the subject of enforced disappearance;
- Reports of the International Committee of the Red Cross;
- The archive of the former Ministry of Human Rights;
- Information coming from official sources;

Reference 46 - 0.16% Coverage

The lack of a precise definition of enforced disappearance in Moroccan law, in addition to the fact that it is a combination of violations resulting in the infringement of all internationally protected human rights, chief among which is the right to life, led to it being given many descriptions including "those of unknown fate", "abducted - fate unknown", and "abducted". However, these descriptions do not include only enforced disappearance according to the internationally recognized definition, but also refer to other forms of arbitrary deprivation of freedom, which lead in many cases to the deprivation of the right to life. This is either because of abuse of authority or because of the disproportionate or excessive use of public force when facing civil disturbances, or as a result of exposure to torture and ill-treatment, or through armed confrontations.

Reference 47 - 0.33% Coverage

The Commission has received official documents from the Royal Armed Forces, the Royal Gendarmerie and the General Directorate of National Security, and it has also reviewed a part of the archive of the Ministry of Human Rights. The documents received from the Royal Armed Forces contained detailed information, including lists, pictures and data about different cases linked to the investigations that its departments carried out concerning cases of disappearance and unknown fate that were subject of investigations by the Commission and requests for clarification by the International Committee of the Red Cross. Studying them enabled the Commission to come to the following conclusions: - The deaths following the armed clashes in the southern regions This group is made up of two sub-groups: • A sub-group including 40 persons who met their end on the field of battle and were buried in known places. 8 of them were buried in Zmoul Niran, and 8 others in Oued Lehchibi in Haouza, 1 in Argoub, 4 in Lahricha, 3 in Oum Dreiga, 2 in Sebkhath Aridal, 2 in Boucraa, 1 in Mahbes, 1 in Deloua, 1 in Ichergan, 1 in Boujdour, 4 in Aguerguer Argoub, 1 in Khang Znitmate in Amgala and 1 in Farsia. • A sub-group including 88 persons who died during scattered battles that were witnessed by numerous districts in the southern regions of the Kingdom between 1975 and 1989, in Farsia, Haouza, Smara, Guelta Zemmour, Erni, Amgala, Bir Lehlou, Lemaallek, Ech-chaab, Tartak, Tifariti, Chebbi, Douaiheb, Zag, Lemzareb, Ghnijate, Legtifa, Lahrichat, and Mahbes, in addition to the above-mentioned places. • Added to the number of dead in battle are 12 cases where the identities of the victims were not discovered because their bodies were burned on the fields of battle.

Reference 48 - 0.08% Coverage

After perusing the archive of the former Ministry of Human Rights and the results of the investigations carried out by the public authorities concerning the cases submitted to the government by the UN work group involved with enforced disappearance, and which were handed over to this group in its meeting held in November 2005, the Commission was able to conclude that 15 had died natural deaths.

Reference 49 - 0.04% Coverage

know the truth, through the unusual means and forms it has devised, which have helped to increase the likelihood of uncovering the truth about the grave violations of human rights which our country witnessed during the previous period.

Reference 50 - 0.47% Coverage

Analysis of the files presented to it concerning the events occurring during the years 1965, 1981, 1984 and 1990, the investigations and the studies carried out by the Commission, enabled it to reach the following conclusions: • Those disturbances saw the commission of grave violations of human rights mainly represented in infringement of the right to life of a number of citizens including children and also persons who had no involvement in those events; • Those violations resulted from a failure to abide by international standards and principles in the field of human rights concerning the conditions and limitations on the use of public force. This led to the disproportionate and excessive use of this force resulting in deaths; • The results of the investigations carried out, as well as the analysis of the events linked to those disturbances enabled the Commission to uncover the fact that the authorities opened fire with live ammunition, and failed to resort to other methods in order to disperse the demonstrations without causing deaths; • Evidence from different registers and testimonies relating to the incidents in question show that many victims died as a result of gunshots in the skull, the rib cage or the abdomen; • The Commission registered a significant number of children among the dead, some of them no older than ten years old; • In some cases, the apparatuses intervening opened fire into houses through open windows or through doors, and struck people including children, old men and women, some of whom died as a result of bullet wounds. These facts are corroborated by testimonies presented before the Commission, as well as by mortuary registers, which establish the occurrence of cases where corpses were removed from inside houses; • When they removed the corpses of those who had been wounded while inside their houses, the intervening apparatuses prevented the families of the deceased from knowing where their bodies had been taken. In addition, the place of burial was concealed. Indeed, the authority refused to record the dead in the death registers held by the offices involved; • Officials refrained from offering help and assistance to wounded citizens, including children who died as a result of gunshot wounds; • The Commission recorded actions committed by the authorities that in some cases demonstrated lack of respect for the dead, shown by transporting them in lorries in a manner that gave no weight to their inviolability;

Reference 51 - 0.27% Coverage

The mission that the Commission undertook in implementation of its mandate constituted a significant step in promoting the right to know the truth through the unusual means and forms it devised, which helped to increase the likelihood of uncovering the truth about the grave violations of human rights which our country witnessed during the previous period. The oral testimonies, as one of the sources used by the Commission, helped to clarify the circumstances surrounding the facts linked to the events object of its investigations. However, in some cases, their limited and fragmentary nature was apparent, when the same events were talked about in different and sometimes contradictory ways by those who had experienced them. This meant that they were only partially helpful in uncovering the truth in specific cases. This obstacle was overcome by cross-checking the data found in these testimonies with information derived from other sources, especially official documents and registers. The latter helped to reveal the truth about numerous aspects of files and cases concerning which it would not have been easy to reach an opinion without comparing the plentiful and varied information concerning them with what is recorded officially in the registers kept by different public offices. However, on numerous occasions the Commission uncovered the miserable state of the archive, in addition to the lack of a unified legal framework to

Reference 52 - 0.50% Coverage

II. Conclusions concerning Gender-specific Violations of human rights

1. points of departure and Methodology The Equity and Reconciliation Commission adopted the dimension of gender in its approach as a crosscutting methodological option to be applied to the different aspects of its work. As a result, it was faced with the necessity of clarifying what were the specific characteristics of the violations to which women were exposed, the harm resulting from them, their experiences and their roles in standing up to the violations. It also had to find out what deductions can be drawn from that concerning the adaptation of the violations and uncovering the different aspects of their impact and the requirements for ensuring non-repetition. At the beginning of its work, the Commission discovered how meagre were the data, the writings and the testimonies, as well as the complete absence of research, concerning gender and the past of grave violations of human rights. This means that the suffering and experiences of women and their roles have been insufficiently known, or rather invisible, and as a result the prevalent ideas concerning the victims of political violence and the actors in public life have been reinforced. These ideas, which place women outside our recent history, depend in their turn on a patriarchal culture, one of whose basic components is the formal sexual division of roles between the public sphere and the private sphere. Truth cannot be complete unless the experiences and sufferings of men and women are taken into account, giving consideration to both what is common to both of them and what is distinctive of each of them. Moreover, reformulation of the group memory requires liberation of the voice of women also, helping it to be heard and preserved, while reconciliation and ensuring non-repetition require that justice be given to women victims and that they be reinstated and recognized for the sacrifices they have made and the roles they have played, and that their status in society be generally strengthened. For all the above reasons, the Commission adopted a methodology whose goal was to highlight the dimension of gender in the grave violations of human rights, by:

- Giving a hearing to the largest possible number of women, insofar as the oral memory is the most important reservoir for memories of the violations of the past, including the misconceptions and the resulting mental, social and physical suffering that permeate it. It did this through holding closed individual and group hearings, and through public hearings where the testimonies of women constituted the most powerful moments;

Reference 53 - 0.18% Coverage

- Conducting a qualitative study about "gender and political violence", through fieldwork covering seven main regions and women from different age, cultural and social groupings, who had lived through experiences of different types of violations and had played different roles and been involved in different events and different political trends. For its research method, the study depended upon "the life-story interview", using interviews and "focus groups";
- Organizing meetings with women's associations, to involve them in formulating summaries of the experience and suffering of women, and formulating draft recommendations for reparation for injuries incurred by them, on the group, symbolic and general human rights levels;
- Using the gender workshop organized in the framework of the National Reparation for Injuries Forum to receive communications, opinions and proposals from local men and women involved in human rights issues.

Reference 54 - 0.44% Coverage

Dealing with the subject of gender and the grave violations of human rights raised the question of the concept of the "victim". This is because distinguishing between "direct victims" and "indirect victims", and "primary victims" and "secondary victims" implies a conceptual problem and an insinuation of hierarchy. The fact is that victims of the violations of the past are not confined to those who were subject to arbitrary detention and enforced disappearance ... but also include (especially in cases of enforced disappearance or death during the violation) their families and in particular their wives, mothers and children, because

they were subject to the violation of their basic rights to support, care, stability, security and knowledge of the fate of their loved ones. They were also subject to maltreatment, harassment, search, threats, and displacement, as well to restrictions on their freedom of movement and their freedom to receive visitors, exclusion from work opportunities, and being prevented from benefitting from some social programmes. This is what has led the Commission to consider the families of detainees and disappeared persons as victims. In addition, reconsideration of the psychological, economic and social injuries, and of the human dimension of the violations, has enabled it to reconstruct the concept of "victim" in such a way as to make it more susceptible to the specificities of the suffering of women. The grave violations of human rights represented a decisive break in the lives of wives and mothers, causing them to lose any sense of stability and serenity. Their sufferings arising from the loss of their relatives were aggravated by harassment, interference, threats, detention, restriction, and their fears over the fate of their sons and daughters. Their sufferings also removed them from the round of family life to cast them into the maze of searching for relatives and loved ones, bringing grievances before the authorities or being maltreated by them. They had to travel far from their familiar world in order to keep visiting prisons or to attempt to uncover the fate of their loved ones. Most of them had never or only rarely ventured outside the neighbourhood where they lived. They had never previously had dealings with the authorities or travelled on their own.

Reference 55 - 0.10% Coverage

In previous paragraphs, we have already indicated some of the injuries to which women were subject as a result of the grave violations of human rights. Here, we want to present summaries of some forms of injury resulting from the mechanisms of state oppression and the violence of instruments of surveillance and punishment in a patriarchal society. These made the impact of the violations more painful, more long-lasting, and more destructive of the progress of their lives. This can be explained in terms of the following categories of injury:

Reference 56 - 0.29% Coverage

iii. reparation for injuries and Justice for Victims The general concept of reparation for injuries is presented in a group of measures and procedures aimed at giving reparation to victims for the harm they have incurred from human rights violations. These measures and procedures usually take various forms, whether the classic form involving financial compensation or other forms of reparation such as recovery of their despoiled rights, reinsertion, restoration of dignity or confiscated rights and restitution. Guided by its holistic approach to reparation for injuries, the Commission sought to link this with its other tasks in the fields of uncovering the truth, establishing justice and promoting the components of reconciliation. It was therefore keen that reparation for injuries should possess various symbolic and material dimensions, affecting individuals, groups and regions. It also made it one of the main elements through which the state could admit its guilt for what had happened. It also considered it a key element of reform with the aim of guaranteeing non-repetition and the entrenchment of the components necessary for the construction of the future. Therefore, in the process of restoring confidence, we cannot confine ourselves to simply providing for material compensation or social services. We must also make sure that as citizens victims enjoy all their rights including the right to participate in the process of reform to consolidate the construction of a state based on law and institutions.

Reference 57 - 0.36% Coverage

During the first meetings that it devoted to the subject, the Commission gave the utmost importance to international references on the subject of reparation for injuries, both at the level of the Commission as a

whole and also on the level of the work group entrusted with reparation for injuries. From the beginning, it bore in mind the developments in international law regarding reparation for injuries, both on the theoretical level and on the level of practice. By perusing a group of relevant documents and references, the Commission was able to come to the following main conclusions: • The provisions of international law contain important principles and standards scattered among a number of international and regional instruments related to human rights. These contain provisions expressly enunciating the right of persons who are the victims of grave violations to benefit from the right of recourse to the competent bodies on the national level. Indeed, some instruments contain provisions expressly enunciating the right of victims to compensation and reparation for injuries; • The issue occupied an important place among the jurisprudential and theoretical innovations pioneered by the Human Rights Committee and the other committees involved. As well as the political efforts expended in the framework of the abovementioned committees, these innovations led to the adoption of a document including the basic principles and guidelines on the right to remedy and reparation for victims of gross violations of International Human Rights Law and International Humanitarian Law; • The above-mentioned document is one of the most important documents whose contents were borne in mind by the Commission, in view of the guiding principles and specific concepts it contains relating to the issue. Perusing its contents helped the Commission to formulate its approach to the subject of reparation for injuries.

Reference 58 - 0.40% Coverage

Based on one of the competences entrusted to the Commission in line with its statute, empowering it to make a comprehensive assessment of the process of settling the file of the past of grave violations of human rights, one aspect of which was to peruse the experience of the Arbitration Commission, the Commission devoted itself: • To studying and analyzing all the files concerning which the Independent Arbitration Commission for the Compensation for Moral and Material Harm Suffered by Victims of Enforced Disappearance and Arbitrary Detention and their Rightful Claimants handed down arbitration decisions either to compensate, to dismiss or to declare that it was not competent. All this was with the desire to formulate a sound opinion concerning the nature and quality of the jurisprudence presented by the former commission; • To recording the approach of the previous commission, in a general manner, regarding the principles, the criteria and the rules that it adopted to assess and calculate the indemnities due to the victims and their rightful claimants. In this connection, the Commission prepared a document concerning the proceedings of the previous arbitration commission which was used as a reference in guiding the national experience of settling the past of grave violations of human rights. The document also provided some elements and conditions for the assessment of this experience, which made it easier to integrate it into the new components of reparation for injuries in the context of the broadened mandate of the Equity and Reconciliation Commission.

4. Formulating a policy and programmes of reparation The Commission devoted a significant part of its meetings and its activities to preparing its approach to and its policy on reparation for injuries. Keen to involve national public opinion, it took into consideration the opinions of national human rights organizations, whether working in the field on the national level or in immigration countries. Sometimes it did this by holding direct meetings and in other cases by what it deduced after studying the memoranda and proposals that were submitted to it.

Reference 59 - 0.46% Coverage

In addition, the Commission categorized and analyzed the files submitted to it that it considered within its competence. This enabled it to extract the data and details that those files contained concerning the stated violations and the resulting harm suffered by the victims and their rightful claimants. Based on the

studies, research and assessments of the subject accumulated in the abovementioned manner, the Commission formulated a philosophy, an approach and specific programmes in the field of reparation for injuries. Concerning financial compensation, the Commission considered it a basic right of victims of grave violations of human rights, and gave it special attention. It adopted principles, criteria and precise units of account observing equality and solidarity among victims with the main purpose of seeking compensation for violations committed. The Commission also gave the same importance to the other forms of reparation for injuries. Pursuant to this, it adopted other forms of reparation programmes, in view of the fact that it had competence, in accordance with the provisions of its statute, to grant reparation for other individual injuries including: physical and psychological rehabilitation, social reinsertion, settlement of employment, administrative and financial situations, settlement of legal situations, and settlement of cases of dispossession. It also considered reinstatement by means of uncovering the truth, erasing the effects of the violations and preserving the memory as a major component in its approach to reparation for injuries, with the same importance as the above. The new components adopted by the Commission in comparison with the experience of other truth committees are the following: • Community reparation, which aims mainly at helping to reinstate the regions which witnessed the occurrence of grave violations, and were harmed by that as a result of the marginalization and exclusion they were subject to; • Gender mainstreaming, by bearing in mind the conditions that were specific to the women who were subject to grave violations.

In general, we can say that the Commission's approach to reparation for injuries, including financial compensation depends on the following main principles: • Justice and equity; • The provisions of International Human Rights Law, Morocco's international obligations, and the lessons and the precepts gleaned from the experience of transitional justice round the world;

Reference 60 - 0.15% Coverage

Processing the files in the way described above enabled the Commission to determine precisely the files relating to subjects not falling within the competence of the Commission, according to the provisions of its statute, and also to determine those which did fall within its competence. It was also able to determine the persons who fulfilled the requirements for compensation as set out by the Commission. In this way it was also able to determine the files that needed evidence to prove or deny the allegations contained in them concerning the subjection of the persons involved to violations of human rights. Beginning from this point, the Commission made final decisions on the files as regards financial compensation and the other components of reparation for injuries.

Reference 61 - 0.20% Coverage

The Equity and Reconciliation Commission considered health care for the victims of grave violations of human rights as one of its priorities and included them within its holistic approach to reparation for injuries and the health problems which the victims or their rightful claimants suffer from, in order to determine them and seek for ways to ensure that they are dealt with.

In order to diagnose the conditions of the victims complaining of physical or psychological illnesses, the Commission carried out a study that enabled it to prepare a preliminary report on the physical condition of the victims of human rights violations by analyzing the data found in the medical documents contained in their files.

The main goal of this study was to assess the nature and the severity of the illnesses that the victims of human rights violations were suffering from and to draw up options and strategies for permanently covering their treatment, both as regards individuals who suffer from illnesses or disabilities, or as regards the group of victims and their rightful claimants.

Reference 62 - 0.27% Coverage

7. community reparation The statute of the Commission enunciated the principle of collective or community reparation for injuries. This enabled it to establish its approach to the subject on the results and findings of the on-site visits to the regions that had experienced incidents in the past and were characterized by the occurrence of grave violations, or those in which were located centres of enforced disappearance or irregular secret detention centres. To the same extent, the Commission was able to use the deductions of the studies and research available to it, and the analyses and discussions conducted concerning them, in order to develop a mediation mechanism in the fields of economic and social development in the regions involved. The Commission was also helped in formulating this new direction by the participative approach it had adopted with all those involved throughout its work in the regions involved: during the investigations it conducted to uncover the facts about enforced disappearance; when it was completing the information and details concerning a group of files submitted to it; when it was managing the cases linked to the burial places; and through the organization of public hearings. The Commission also involved the human rights activists of civil society, associations working in the field of local development and also the development agencies and institutions working in those regions.

Reference 63 - 0.30% Coverage

A gradual process of reconciliation began in the country under various forms and in various fields from the beginning of the 1990s. It focused on seeking decisions on the basis of constitutional principles and was crowned with the opposition voting to approve the constitutional amendments of 1996, its agreement to form a government, and an agreement being reached concerning a range of laws relating to the creation of a state of institutions and human rights. This dynamic saw important legislative reforms, beginning with the provisions regulating public freedoms, elections, the repeal of laws dating back to the colonial era, and the historical compromise reached between different political, ideological and religious trends with regard to the amendment of the Personal Status Code (the Mudawwana). In this context, our country also saw qualitative changes on the level of institutional guarantees relating to the strengthening and protection of human rights, beginning with the creation of the Advisory Council on Human Rights (C.C.D.H.), and its development within the framework of the Paris Principles, the creation of the administrative courts, the establishment of the Royal Institute for Amazigh Culture (I.R.C.A.M.), and the creation of the Diwan Al-Madhalim (Board of Grievances) and the High Authority for the Audio-Visual Media (H.A.C.A.). This development helped in the wide spread of the consciousness of the importance of citizens' participation in the management of public affairs, nationally and locally. In addition, the freedoms of expression, the press, affiliation and assembly grew stronger.

Reference 64 - 0.42% Coverage

Against the background of these political and institutional developments, the human rights issue witnessed noticeable and accelerating progress on the level of thought and culture. This enabled the human rights dynamic to open up to doctrines of new schools relating to international human rights law and the experiences of transitional justice round the world regarding tackling the file of the past of grave violations of human rights in the country. In harmony with their reconciliation with their past, Moroccans chose to reach a peaceful, just and equitable settlement of the past of violations by adopting restorative justice rather than adversarial justice, and historical truth rather than judicial truth, because the arena for this sort of justice is not the law courts but the public space, whose horizon stretches to include all spaces of social, cultural and political action. In implementation of the provisions of the Commission's statute,

and in particular Paragraph 7 of Article 9, which lays down, among the strategic goals, “contributing to the development and enrichment of a culture of dialogue, enrooting the components of reconciliation in support of democratic change in the country, constructing a state based on the rule of law, and spreading the values and culture of citizenship and human rights”, and taking into account the fact that reconciliation is a constant process, the Commission sought to make the task of broadening its scope a horizontal objective that was invoked in all the programmes and activities that it organized. Since the beginning of its work, it was careful to create the conditions of free debate about the components of reconciliation, by organizing numerous conferences, seminars and field visits covering most regions of the national territory. To achieve this, it adopted a methodology of outreach work and communication in its informative dimension and its social content in partnership with different actors in order to achieve a common reading that would help to find the key to understanding the violations, irregularities and infringements that occurred, and allow the construction of a common memory, which is often absent in periods of repression.

Reference 65 - 0.55% Coverage

Given the close link between reconciliation and the preservation of a collective memory, the Commission sought to broaden the scope of those benefitting from reparation programmes, by including regions whose inhabitants had begun to feel that they were subject to marginalization and a sort of collective punishment by dint of specific historical events linked to grave violations of human rights or because of the presence of secret detention centres in them. Thus, the reparation for collective injuries programme began to be a physical expression of the spirit of positive citizenship and social solidarity, and a contribution to the strengthening of the presence of the human rights, democratic, and participatory approach in the ongoing economic and social development programmes. In harmony with this, the Commission placed at the heart of its concerns the need to give persons harmed by the grave violations of human rights access to opportunities for reinsertion in order to restore their dignity, linked with reparation for group injuries to enable society at both the local and national levels to be positively involved in the ongoing process of building democracy in order to restore trust in a state of institutions and the rule of law, and to ensure its effective participation by means of citizenship, thus ensuring the enrootment of social justice and the success of the modern democratic society project. The Commission adopted the principle of affirming the truth concerning the violations in a public manner and within a framework of free debate and calm discussion, in groups open to all elements of society, as a strategic choice to express the responsibility of the state rather than the responsibility of individuals. One of the manifestations of reconciliation was the expression of the issue of non-repetition insofar as it is a component that concerns the future. Because of this, the Commission considered that the reform begun since the 1990s should be continued in order to ensure respect for human rights, in legislation, by means of institutions, as well as in practice. The purpose of this was to strengthen the process of constructing a state of law, so that democracy does not change into mere forms and mechanisms. Thus the Equity and Reconciliation Commission intended that the process of uncovering the truth and granting justice to victims should first of all ease their sufferings and reinstate them by enabling them to regain their dignity and their complete feelings of citizenship. Secondly, this process was intended to help to deepen society's understanding of the events of the past, and to develop its concern to respect human rights as one basic element in strengthening national solidarity and social cohesion, thus creating the conditions of truth in order to transcend the tensions, the lack of trust, the despair within society and the tendency to manage conflicts in a violent manner.

Reference 66 - 0.46% Coverage

In the context of supporting the process of reconciliation, the Commission organized seven public hearings in six regions of the kingdom of samples of victims, in order to restore the dignity of the victims whose rights had been violated, to reinstate them morally, to preserve the group memory, to share their pain and their suffering, and to alleviate the psychological after-effects. These hearings also played an educational role with regard to those responsible, public opinion, society and future generations, and they therefore represent a moment of great significance in the process of achieving justice and reconciliation. For the first time, the victims were allowed to make their voices heard from an official public platform and to have people listen to their testimonies. This is an educative message raising awareness of the forms of those violations and the pain resulting from them, thus sensitizing people to the necessity of all the collective will of the state and society cooperating together to avoid repetition. Thus the first and second sessions, organized in Rabat on 21-22 December 2004, paved the way for the establishment of "a national narrative" about the suffering and pain of the past, thus creating additional gateways for Moroccans to be reconciled with their past and with themselves. They also helped to disseminate the Moroccan experience and to reaffirm Morocco's involvement in and commitment to democracy and modernity. The idea of organizing the hearings focused on their educational role in creating greater preparedness for and acceptance by society and the state, and convincing them of the necessity of holding fast to, protecting and promoting the principles of human rights. It intended to enshrine the duty of bringing a just and equitable close to the page of grave violations and to prevent its repetition by affirming and broadcasting in an open and official way the scale those violations reached in the country, and the pain that they caused in their victims and their families, relatives and acquaintances, and their psychological, moral and physical effects on the local and national levels. In parallel with this, it held open meetings to consult with and to gauge the opinions of local actors concerning the best methods to achieve community reparation in their regions and ensure citizens' reconciliation with their contexts and their history in many Moroccan towns and villages.

Reference 67 - 0.44% Coverage

numerous conferences, seminars and field visits covering most regions of the national territory. These field visits were an opportunity to communicate directly with the victims and their loved ones. These visits were powerful occasions either to listen to the victims or to support them psychologically and socially, or to complete the information in their files. In cooperation with the offices of the Ministry of the Interior, it also opened centres to welcome and to receive communications from petitioners and their rightful claimants in Azilal, Beni Mellal, and in the southern and northern provinces of the kingdom. In the same provinces, it held dialogue sessions with victims and their rightful claimants, in an atmosphere of frankness and transparency, which made these sessions therapeutic moments complementary to the role played by the public hearings. During the visits, it organized communication meetings with a broad spectrum of components of the political, trade union, associational and locally elected officials in these regions. They centred around explaining the deep bases of Morocco's experience in the field of transitional justice, and the importance of the process of reconciliation with one's history, one's context and oneself in consolidating the democratic transition. The Commission was firmly convinced that the question of turning the page on the past and contributing to the construction of a modern democratic state and a society in which rights are protected and duties are clearly recognized, was a societal concern involving all Moroccans, which involvement should be expressed through the social, political and associational organizations that they were involved in. To encourage this, the Commission held a series of consultations in numerous universities and with political, trade union and associational actors. It also sought the assistance of national scholarly and scientific expertise to conduct studies and draft background papers for the final report, relating to issues like enforced disappearance, arbitrary detention, education in human rights, and social gender and the violations, and also to enrich its recommendations

and proposals. The Commission held four public academic conferences in Rabat, Marrakech, Tangier and Casablanca, which dealt with the following:

Reference 68 - 0.28% Coverage

These events took place with the participation of a host of human rights activists, various elements of the associational fabric and a number of intellectuals, academic researchers and practitioners. It also organized five dialogue sessions, in the form of public discussion panels that were broadcast over the audio-visual media and the Commission's web page. The dialogue sessions were intended to involve public opinion in frank and serious discussion concerning the political, intellectual and historical contexts of the human rights violations that Morocco had witnessed since the early days of independence, and concerning the reasons that led to their occurrence, and their repercussions on the political evolution of Morocco. It also sought to push towards ways of formulating practical projects and work programmes to consolidate a state based on law and institutions that protects liberties and ensures non-repetition. The proceedings of these sessions took place with the participation of those with theoretical and practical expertise and people concerned and active from political and civil society. They concentrated on analyzing the political, economic and social contexts of the violations, and researching practical ways to transcend means of punishment that were contrary to human rights. There were also proposals for institutional, legal, and educational reforms meant to ensure protection of liberties and the consolidation of the rule of law.

Reference 69 - 0.46% Coverage

proposals meant to ensure non-repetition, the erasure of the effects of the violations, and the restoration and strengthening of trust in the rule of law, the Equity and Reconciliation Commission embarked on the preparation of the recommendations that will crown its final report from the assumption that the political will was present to continue the efforts to promote and strengthen the protection of human rights, in the context of the democratic transition of the country, and to support the process of reform taking place in various fields relating to human rights. In implementation of these general motivations, the Commission's recommendations depend upon the following bases: • His Majesty's call to reform the judiciary, in order to ensure the rule of law and the equality of all before it whatever the circumstances, and to strengthen its role in winning the struggle for democracy and development; and His Majesty's insistence on the necessity of the separation of powers on the level of the administration and the state; and the necessity to provide citizens with swift and efficient legal means to defend their rights, thus affirming a new understanding of authority; • The broader humanitarian dimensions of the National Initiative for Human Development; • The constitutional entrenchment of human rights by stressing the kingdom's commitment to them as they are internationally recognized; • The continuation of reform projects and the updating of the legal framework relating to individual and collective rights and freedoms to strengthen the protection of human rights in terms of their bases and legal guarantees; and the launch of a national discussion concerning the options and bases that must be laid down in the field of penal policy; • The affirmation of the need for a qualitative revision of the Family Status Code with a view to consolidating the legal guarantees of the rights of women and children and the support of the family on a basis of justice and equity; • The reconsideration of cultural rights and the Tamazight language as a constituent of the national identity.

Invoking all these gains, the Commission has prepared the recommendations and proposals that have crowned its final report trusting that they will be an additional contribution to the reform process currently under way in the country aiming to entrench human rights, secure democracy and strengthen the rule of law.

Reference 70 - 0.17% Coverage

- International standards relating to human rights and the benefits gained from the comparative experiences of transitional justice round the world;
- Deductions from the Moroccan experience concerning the grave violations committed in the past in terms of their types, their extent, the responsibility of different institutions for them and the deficiencies in the fields of law, justice, and security governance;
- Academic studies and research conducted on the legislative and statutory texts relating to human rights; and on the prerogatives and functions of the bodies involved in or obtruding into the field of human rights;
- Dialogue and consultative meetings with political parties, associations and nongovernmental organizations involved and representatives of the public authorities.

iii. Main Fields of proposed reform 1. consolidating constitutional protection of human rights

Reference 71 - 0.15% Coverage

- Respect for human rights and improving security governance should be consolidated, especially in case of crisis;
- It affirms the principle of the primacy of the standards of International Human Rights Law and Humanitarian Law over domestic laws;
- The substance and tenor of basic freedoms and rights that the constitution contains should be expressly enunciated therein; so should the principle that the regulation of these rights is the prerogative of the law so that the legislator himself is obligated, whenever he embarks upon regulating their practice, to legislate, in addition to the guarantees already present, other protective guarantees along with the methods of recourse to justice that are open to citizens who may feel that their practice of any of these freedoms or rights has been infringed;

Reference 72 - 0.39% Coverage

- The constitutional guarantees of gender equality in political, economic, social and cultural rights should be consolidated;
- The independent constitutional control of laws and autonomous regulations issued by the executive branch should be strengthened, and the right of invoking an exemption of unconstitutionality of a given law should be enunciated in the constitution;
- The practice of enforced disappearance, arbitrary detention, genocide, and all forms of cruel, inhuman or humiliating treatment and punishments should be criminalized;
- All forms of discrimination internationally prohibited, and all forms of incitement to racism, xenophobia, violence and hatred should be prohibited on the basis of supreme constitutional principles;
- The principle of the presumption of innocence, and the guarantee of the right to a fair trial should be affirmed in the constitution;
- The constitutional principle of the separation of powers, particularly as it concerns the independence of the judiciary and the statute of the judiciary should be consolidated, and any interference by the executive branch in the organization of justice and the conduct of the judicial branch should be expressly prohibited;
- The constitutional guarantees of the independence of the Supreme Council should be strengthened;
- The powers of parliament to investigate facts concerning respect for human rights and uncovering any events that might be evidence of grave violations should be clarified and strengthened;
- The responsibility of the government to protect human rights and preserve public security, order and administration should be affirmed.

2. pursuing adherence to the conventions of international human rights law

- The Second Optional Protocol to the International Covenant on Civil and Political Rights aimed at Abolition of the Death Penalty should be ratified;
- The Optional Protocol to the Convention on the Elimination of all forms of Discrimination against Women, should be ratified, and the reservations held by Morocco about some provisions of the said convention should be withdrawn;

Reference 73 - 0.01% Coverage

3. consolidating the legal and Judicial protection of human rights

Reference 74 - 0.12% Coverage

3.2. Criminalization of Gross Violations of Human Rights • The country's domestic penal legislation should conform with its treaties and obligations regarding international standards relating to enforced disappearance and arbitrary detention; • The Equity and Reconciliation Commission welcomes the government's initiative to prepare a draft law criminalizing torture, in implementation of the recommendation of the Advisory Council on Human Rights and also welcomes parliament's adoption of it pending its official publication. It considers that its provisions must be strengthened in accordance with the above.

Reference 75 - 0.18% Coverage

5. upgrading penal policy and legislation • The results of the national dialogue conducted on the occasion of the Symposium on Penal Policy in Morocco held in Meknes in December 2004 should be implemented, given that its conclusions and recommendations are considered an excellent basis for the formulation of ways to reform the country's penal policy; • The revision of the Code of Penal Procedure with additional and complementary provisions enshrining the respect of human rights should be consolidated, moving towards an investigative justice rather than an accusatory one, and correcting the dysfunctions that have been exposed by practice and have hindered the legal profession; • The recent revision of the Penal Code should be consolidated, in order to strengthen the legal guarantees protecting women against violence; • The recommendations issued by the Advisory Council on Human Rights in its report on conditions inside penal institutions should be implemented.

Reference 76 - 0.08% Coverage

7. implementation of the recommendations of the advisory council on human rights concerning prisons • The recommendations issued by the Advisory Council on Human Rights contained in its special report on the conditions in penal institutions issued in 2004 should be implemented; • A restricted administrative board should be created, composed of judges, educators and specialists to oversee the management of penal institutions.

Reference 77 - 0.10% Coverage

8.1. The Responsibility of Government in the Field of Security • The principle that "the government is corporately responsible" for security operations, for maintaining public order, and protecting democracy and human rights should be activated. On this basis, the government should be obliged to inform the public and parliament of any incidents requiring the intervention of public force, of the exact course of such intervention, of security operations and their results and responsibilities, and the corrective measures it might adopt.

Reference 78 - 0.15% Coverage

- The political parties represented in parliament should implement the principle of their political and legislative responsibility concerning the protection of human rights and the basic rights of citizens, whenever there are claims pertaining to the occurrence of grave violations of human rights or grave deeds infringing or threatening the values of society and its democratic choice;
- The performance of parliamentary investigative committees should be improved, with security and legal specialists to help them to prepare objective meaningful reports uninfluenced by purely political considerations;
- The mechanism of accountability and direct hearings before parliament concerning responsibility for the maintenance of security and public order should be strengthened;

Reference 79 - 0.19% Coverage

8.7. Programmed Training of Agents of Authority or Security in the field of Human Rights

- Basic and continuous training programmes should be established in the field of human rights and the culture of citizenship and equality, for officials and agents of security and those entrusted with maintaining order;
- Guide books and didactic aids should be prepared and published with the purpose of instilling in the various officials and agents of security a comprehensive awareness and sensitivity to the rules of good governance at the level of security, and respect for human rights.

9. promoting human rights through Education and awarenessraising • The Equity and Reconciliation Commission calls for the drawing up of a comprehensive long-term national plan concerning this, springing from the national consultations that are taking place concerning the initiative of the Advisory Council on Human Rights aiming at drawing up a national plan of education about and promotion of human rights.

Reference 80 - 0.20% Coverage

- An independent national institute should be established among the universities to be given the task of documentation, research and publication concerning the distant and more recent history of the country. Within the framework of the mission entrusted to it, it should undertake everything to do with documentation, research and publication about the historical events connected to the past of grave violations of human rights, and to the developments regarding human rights issues and democratic reform.

11. The Advisory Council on Human Rights in the field of combating Violations • The competence of the Council to combat violations (either automatically or on the basis of a request) should be strengthened so that it can investigate the facts relating to human rights violations, and monitor the conduct of trials; • The level of cooperation of the public authorities with the Council should be raised with regard to its investigations, granting it the right to have access to relevant information and reports, and to be informed of corrective measures taken by the authorities.

Reference 81 - 0.15% Coverage

- The report should be considered as a national and public reference document to be integrated into the educational system in general, and in the basic and continuous professional training of agents of authority, security men, judges, judicial officers, lawyers, and public officials in penal institutions;
- Activities of a media and educational nature should be organized to present the report to citizens;
- Lectures and fora should be organized to present and discuss the report on the international level in order to disseminate the Moroccan experience in the field of truth and reconciliation;
- A national event should be organized to honour women who were victims of the past of grave violations of human rights, as an acknowledgement of the pain that they endured and the sacrifices that they made.

Reference 82 - 0.41% Coverage

• A committee should be created in the Advisory Council on Human Rights to monitor the implementation of the recommendations issued by the Commission in the fields of truth, reparation for injuries, and guarantees of non-repetition; • A joint ministerial committee should be established on the government level to monitor the implementation of the Commission's recommendations, representing the Ministries of the Interior, Justice, Culture, Media, Education and Professional Training; • The implementation of the results of the proceedings of the Commission in the fields of reparation for injuries should be monitored by means of a monitoring mechanism to take official responsibility for the preparation of the rulings issued regarding compensation of victims and the procedures for informing the said victims. It should also be responsible for directing the rulings to the government for them to be implemented, and ensuring that the Commission's recommendations are implemented regarding the programmes for reparation for other injuries; • Technical committees should be established to monitor the implementation of community reparation for injuries projects, on which should be represented the sectors and services involved. It should inform the government and the monitoring committee attached to the Advisory Council on a regular basis of the results of its proceedings; • Joint monitoring committees should be established composed of elected officials, representatives of the local authorities and non-governmental organizations, and representatives of the government technical services involved. They should be entrusted with monitoring the implementation of the proposed projects on the commune, provincial and regional levels. These committees should present regular reports to the local communes, the government and the monitoring committee attached to the Advisory Council above-mentioned.

Vi. The preservation of the commission's archive and regulating its use • The Commission's entire archive should be transferred to the Advisory Council for Human Rights, which shall be responsible for keeping and organizing it, and also determining the method and conditions for consulting it.

Reference 83 - 0.19% Coverage

VII. The Official Public Apology • The Commission recommends that, after it has presented its final report, the Prime Minister should make a public announcement before parliament, including an official apology in the name of the government for the state's responsibility for the proven grave violations of human rights of the past.

Viii. Ensuring health cover for the Victims • The Commission recommends ensuring basic health cover according to Law 6500 for persons who have been ruled to be victims of human rights violations; • Pursuant to this, it proposes that those persons be integrated, in the first phase, in accordance with Clause 2 of this law, as pensioners for whom the state pays the necessary expenses to the bodies responsible for medical cover; • In the second phase, the Advisory Council on Human Rights may assist in preparing a draft amendment concerning this, in agreement with the parties involved. Pursuant to this, this group should be clearly absorbed within the framework of this law.

Reference 84 - 0.01% Coverage

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Reference 1 - 0.01% Coverage

ESTABLISHING TRUTH AND RESPONSIBILITY REGARDING HUMAN RIGHTS VIOLATIONS

Reference 2 - 0.01% Coverage

rEsponsibility rEgarding human rights Violations

Reference 3 - 0.14% Coverage

ChaptEr ii thE EnForCED disappEaranCE and arbitrary dEtEntion issuE

.....	21	1. the role of the government
.....	22	2. the role of the advisory Council on human rights
.....	23	3. the role of parliament in uncovering Facts about Civil disturbances
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Reference 4 - 0.25% Coverage

As a combination of violations infringing upon many internationally protected basic rights, enforced disappearance constitutes one of the grave violations which fall within the remit of the Equity and Reconciliation Commission. It is further aggravated by its far-reaching consequences, extending far beyond the immediate victims. As a violation infringing upon the right to life, enforced disappearance is intended as a means to instil fear and panic in victims but also in families, friends and society at large. Because the phenomenon of "enforced disappearance" is relatively new, general conventions on human rights, on both the international and regional¹ levels, do not include any express provisions about the right not to be exposed to this violation. With that in mind, international law scholars argue that this complex practice has purposely been devised in order to circumvent the legal framework set up for the protection of human rights. However, with the rampant spread of the practice of enforced disappearance in many countries, the international community has become seriously concerned about dealing with it, through establishing binding legal mechanisms to protect and guarantee the right not to be exposed to this violation.

Reference 5 - 0.09% Coverage

1. in international law The provisions of International Human Rights Law relating to protection against exposure to enforced disappearance and to the guarantee of the rights of individuals who are subject 1 e.g. the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the European Convention on Human Rights, the American Convention on Human Rights and the African Charter on Human and Peoples' Rights.

Reference 6 - 0.61% Coverage

to this practice -or their families- are scattered among a group of international instruments³ relating to human rights. The International Covenant on Civil and Political Rights includes a group of basic rights that

are violated whenever the individual is subjected to enforced disappearance. Among them are the following main rights : the right to life ; the right not to be exposed to torture and ill-treatment ; the right to legal personality etc. As explicitly stated in the jurisprudence of the Human Rights Committee, spelled out in a General Comment⁴, the non-derogable provisions stipulated under Article 4 of the Covenant shall be construed to include the basic principles of International Humanitarian Law and the norms of international law, including prohibition of abduction, the taking of hostages and secret detention, the right to protection from arbitrary deprivation of liberty, the right to humane treatment, and full respect for the inherent dignity of the human person. The provisions of International Humanitarian Law are applicable to all forms of disappearance in case of armed conflict, whichever side is responsible, including individuals whose families have lost contact with them as a result of war or institutional chaos engendered by an armed conflict. Mindful of "disappearance", the Geneva Agreements and Additional Protocols do provide for the rights and duties relating mainly to the right to life, the prevention of torture, protection of individual liberty and the right to family life. Under International Humanitarian Law, the obligations of states include the duty to conduct enquiries and investigations into cases of disappearance and communicate the findings to families. Pursuant to Articles 32, 33, 34 and 74 of Protocol I, the parties to the conflict are under the obligation to find the whereabouts of the persons declared disappeared, uncover the truth about their disappearance, provide relatives with information and facilitate the reunion of families dispersed as a result of an armed conflict. In addition, the parties to the conflict must offer support to humanitarian organizations engaged in this task by recording the relevant information and facilitating family reunions. Although the Statute of the International Criminal Court also deals with the prohibition of enforced disappearance, it does not address disappearances in a comprehensive manner. In conformity with Article 7 of the Statute, enforced disappearances, i.e. cases of persons deprived of liberty with the intention of removing them from the protection of law for a prolonged period of time, are deemed crimes against humanity when such acts are committed in the context of a widespread and systematic assault on a civil population.

3 The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the European Convention on Human Rights, the American Convention on Human Rights, the African Charter on Human and Peoples' Rights, and the Inter-American Convention on Forced Disappearance of Persons.

Reference 7 - 0.16% Coverage

Finally, the jurisprudence of the Human Rights Committee, in addition to its continuous political efforts, led to the drawing up and the ratification of a special international convention concerned with protection against enforced disappearance. Under this convention, enforced disappearance is defined as "the deprivation of liberty in any form or for any reason whatsoever by persons or groups acting with the authorization, support or acquiescence of the State, followed by absence of information or refusal to acknowledge the deprivation of a person's liberty, or refusal to offer information or concealment of the fate or whereabouts of a disappeared person" (Article 1 of the Convention). Article 4 of the said convention states a number of obligations on State parties. Among them are :

Reference 8 - 0.30% Coverage

International Human Rights Law has been consolidated with a set of legally non-binding texts on a number of rights that are coming into existence in the form of general principles or directives, particularly the right to know the truth. These texts have helped to consolidate the search for truth about the grave violations committed during the previous period, a major objective in the experiences of truth and reconciliation commissions around the world. A body of principles to combat impunity stipulate that "every people has the inalienable right to know the truth about past events involving the perpetration of

heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes. Full and effective exercise of the right to the truth provides a vital safeguard against the recurrence of violations". Just as they confirm the right to truth, these principles establish a link between this right and the right to preserve memory, reaffirming that "a people's knowledge of the history of its oppression is part of its heritage and, as such, must be ensured by appropriate measures in fulfilment of the State's duty to preserve archives and other evidence concerning violations of human rights and humanitarian law and to facilitate knowledge of those violations. Such measures shall be aimed at preserving the collective memory from extinction and, in particular, at guarding against the development of revisionist and negationist arguments".

Reference 9 - 0.14% Coverage

Under the Universal Declaration of Human Rights, a link is established between arbitrary detention and a person's right to liberty and personal security (Article 3). According to the conclusions of the UN Working Group on Arbitrary Detention established in 1991, as enunciated in the Group's opinions on political trials, the detention of a person, even when based on a court decision, may be arbitrary if all conditions for a fair trial are not met. The protection of the right to freedom from arbitrary detention has been consolidated under the provisions of the International Covenant on Civil and Political Rights. Article 9 of the Covenant lays down three basic guarantees :

Reference 10 - 0.23% Coverage

The fair trial guarantees mentioned in Articles 10 and 11 of the Universal Declaration of Human Rights are defined in clear terms in Articles 14 and 15 of the Covenant, particularly the following : • Tribunals established by law shall be competent, independent and impartial ; • Everyone charged with a criminal offence shall be presumed innocent ; • The person accused shall be "informed promptly of the nature and cause of the charge against him" ; • A person shall have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing ; • A person shall have the right to legal assistance, to be informed of this right, and to have legal assistance assigned to him by the court, if need be ; • A person shall have the right to examine, or to have examined, prosecution witnesses and to call in exculpatory witnesses for testimony ; • A person shall not be compelled to testify against himself or confess guilt ; • A person convicted of a crime shall have the right to review before a higher tribunal ; • The principle of non-retroactivity of laws shall be complied with.

Reference 11 - 0.07% Coverage

1. in international law The provisions of International Human Rights Law prohibit, under several international instruments, mainly the Universal Declaration of Human Rights (Article 5) and the International Covenant on Civil and Political Rights (Article 7), torture and cruel, inhuman or degrading treatment or punishment.

Reference 12 - 0.26% Coverage

V. the mandate of the Equity and reconciliation Commission The statute of the Equity and Reconciliation Commission defines its mission as uncovering the truth about the gross violations of human rights committed in the past, including the facts about them, their contexts and the responsibility of those who participated in them. The statute empowered it : • To establish the type and degree of gravity of those violations, by analyzing them in the framework of the contexts in which they were committed and in the

light of the standards and values of human rights, the principles of democracy and the rule of law. This was to be done by carrying out investigations, receiving communications, and perusing the official archives and obtaining any information and data made available by the bodies involved with the purpose of uncovering the truth ; • To continue to do research regarding the cases of enforced disappearance whose fate is not yet known, and to make every effort to investigate facts that have not yet been brought to light, to discover the fate of those who have disappeared, and to find suitable solutions for those whose deaths are proved ; • To reveal the degree of responsibility of state or other apparatuses for the violations and the events object of its investigations.

Reference 13 - 0.08% Coverage

Moroccan history has been marked since independence in 1956 by episodes of enforced disappearance and arbitrary detention. In view of the diverse and complex cases associated with these grave human rights violations, it was only natural that a wide range of roles and approaches should be considered for the settlement of the issue both on the official and civil society levels.

Reference 14 - 0.31% Coverage

Pointed questions have been asked over the last few years about the position and the role of the government as an executive and political authority and its involvement in the issue of enforced disappearance and arbitrary detention, especially as some of its departments, such as the Ministry of the Interior, the Ministry of Justice and the Ministry of Human Rights, were directly involved in the issue. One could say that previous governments had not attached to the subject the importance it deserved, until the opposition-led coalition government (or "alternance") came to power and espoused a new vision that became manifest in the management style and policies adopted in handling cases pertaining to human rights issues.

We may also recall the initiative taken by the Prime Minister of this government shortly after his appointment when he established a small ministerial unit. Acting under his supervision and comprising the Minister of the Interior, the Minister of Justice and the Minister of Human Rights, the unit set out to monitor the legacy of the issue of enforced disappearance and arbitrary detention. However, the initiative was short-lived. With regard to grave human rights violations, the government of consensual "alternance" managed to achieve the following : • Closing the files of former political detainees and exiles through reinstatement and settlement of their financial situations ; • Allocation of funds for the implementation of the arbitral decisions issued by the Independent Arbitration Commission for Compensation.

Reference 15 - 0.25% Coverage

2. the role of the advisory Council on human rights With regard to the Moroccan experience, we can say that the attempt to achieve a comprehensive settlement of the enforced disappearance and arbitrary detention file began with the Advisory Council on Human Rights. For this reason the Commission considered, from the outset of its work, that it was necessary to assess its role and the way it handled this file insofar as it was the body entrusted by the highest constitutional and political authority in the country with the task of resolving it according to the principles of justice and equity. Looking back upon the main stages of the Council's management of the issue, we note the following : • The Council examined the subject of political detainees during its ninth meeting held on 12-14 and 19 July 1994, which was devoted to formulating the Royal Decision granting general amnesty ; • It examined lists of persons detained in connection with cases regarded as being of a political character by national and international human

rights organizations ; • It examined the subject of the expatriated ; • It acclaimed a decision taken by the Government to settle the issue of the disappeared persons under which survivors were released.

Reference 16 - 0.12% Coverage

- Only eleven detainees could be described as political prisoners under the definition laid down by the UN Human Rights Committee in its 1980 session. Nevertheless, the Council submitted a request for amnesty in favour of 413 detainees on the grounds that they, along with the above eleven detainees, were sentenced in the aftermath of unfortunate incidents ; • The expatriated should include persons who chose voluntary expatriation but were not sentenced or pursued by justice as well as persons who evaded the law following a court sentence or legal action. The Council upheld the right of the first category as

Reference 17 - 0.36% Coverage

To complete its examination of the lists of detainees sentenced by a court, the Council once again requested, in its 12th meeting held on 20 April and 28 September 1998, an amnesty in favour of 28 more detainees. In connection with disappeared persons, however, the Council considered that the issue was about "persons who disappeared" and not "persons who were forcibly disappeared", and that it involved "a limited number of persons and dates back a long way". It is the Commission's opinion that this constituted a false premise in view of the importance of the issue and the decision to deal with it, and in view of the attendant circumstances and historical contexts, as well as the requirements for achieving a just and equitable solution. The Council proposed on 6 April 1994 the creation of a joint committee composed of members from the Ministry of the Interior, the Ministry of Justice, the Ministry of Human Rights and members from the Council to discuss the subject and submit recommendations. A restricted commission was then established for the purpose. It first of all drew up an initial list of 555 cases, which afterwards turned out to contain names mentioned more than once and names of persons who could have gone missing during war in the Sahara. Based on the Commission's conclusions, an enlarged twelve-member commission was proposed to look into the subject, supported by a tripartite technical restricted committee made up of a president of a chamber of the Supreme Court and a representative of each of the Minister of Justice and the Minister of the Interior. Upon review of the restricted commission's proceedings and approval of its report by the 12-member committee, the Council issued in its 12th meeting a memorandum, containing an initial list, where it holds that :

Reference 18 - 0.13% Coverage

These conclusions met with strong objections from human rights organizations and former victims. They, nevertheless, led to the creation of a new atmosphere marked by the emergence of fresh perspectives such as, in particular, a stauncher belief in the urgency of a comprehensive and just settlement of the issue of grave human rights violations in our country. The Council proposed the principle of financial compensation in favour of victims, as well as the establishment of an independent arbitration body to be charged with determining the compensation due to victims or rightful claimants through a recommendation submitted to His Majesty the King.

Reference 19 - 0.43% Coverage

4. the role of Civil society Since its establishment in 1962 and throughout its history, the Moroccan Bar Association has been engaged -via congresses, debates and seminars- in human rights issues, in terms of the prevailing atmosphere and relevant legal guarantees. It has also continuously monitored human rights

violations, conducting regular analysis and submitting proposals. The twenty-five congresses held by the Association over a period of more than forty-three years provided openings for a stalwart defence of an independent judiciary, respect for personal rights and the guarantee of human rights. The Association opposed the amendments to the Code of Penal Procedure of 1962 and in its 11th congress condemned the widespread practice of "abduction". In its 14th congress, the Association further considered the amendments to the Dahir regarding public liberties and the amendments to criminal procedure a flagrant proof of the deterioration that had wreaked havoc on the acquired rights of the Moroccan people and an outright violation of all guarantees of public and personal liberties, and called for the ratification of all international human rights conventions and agreements. In its 17th congress, the Association called for all legislation curbing guarantees of public liberties to be reviewed and brought into conformity with international declarations, covenants and conventions. In its 19th congress, the Association further called for the abrogation of the Dahirs of 29 June 1935 and 26 June 1939 and all laws curbing the exercise of political, trade union and cultural liberties, as well as calling for the release of all political and trade union detainees, for all expatriated persons to be allowed to return to the homeland and for persons dismissed from work to be reassigned to their jobs. The Association reaffirmed these pleas in its 21st and 23rd congresses and in all subsequent congresses. The Association organized a national symposium on human rights in December 1987. Breaking new ground, it presented on 10 December 1990, jointly with other organizations, the National Human Rights Charter, the first Moroccan charter on the subject.

Reference 20 - 0.52% Coverage

Since the mid 1970s, the human rights scene has witnessed the emergence of a growing movement led by families and relatives of political detainees. Spearheaded by detainees' mothers and spouses, the movement developed various forms of coordination : In the first stage, extending from the mid 1970s to the late 1980s, families of political detainees and disappeared persons whose fate was unknown were brought under the spotlight ; In the second stage, extending throughout the 1990s, the sphere of coordination expanded to include families of political detainees, families of the disappeared persons whose fate was unknown and Tazmamart survivors and casualties ; As from 2000, victims' relatives and groups of released detainees organized themselves into a coordination committee for families of the disappeared, persons whose fate was unknown and victims of enforced disappearance. To an extent that varied according to the level of development, the human rights movement in Morocco constituted a staunch moral support and a petitionary force in the direction of a just settlement of past grave human rights violations. The premises and performance that characterized the work of human rights associations regarding the settlement of past human rights violations could be read in terms of three main stages : The First Stage, extending from the early 1990s, when victims of enforced disappearance still in detention were released, until 2 April 1998, when the Advisory Council on Human Rights issued its memorandum on the occasion of its 12th meeting ; The Second Stage, beginning as a reaction to the contents of the memorandum issued by the Advisory Council on Human Rights, and extending until the date when the National Symposium on Past Gross Human Rights Violations was held during 9-11 November 2001 ; The Third Stage, beginning with the submission by the Advisory Council on Human Rights of its recommendation to His Majesty King Mohamed VI regarding the establishment of a commission on equity and reconciliation. Throughout the previous stages, individual and group positions held by human rights associations and organizations varied in terms of ways of thinking, monitoring and establishing standards, and the way they interact with political developments and the question of reform. a. Up until 1998, the Moroccan Association for Human Rights (A.M.D.H.) claimed that, despite the lapse of over four decades since Independence, and notwithstanding frequent claims that they are respecting human rights, as evidenced by the release of some victims of disappearance, nevertheless :

Reference 21 - 0.43% Coverage

b. The Moroccan Organization for Human Rights (O.M.D.H) issued a preliminary list of disappeared persons and recorded testimonies by victims of enforced disappearance released from Tazmamart and Kelaât M'Gouna detention centres and, at the same time, founded its positions on a petitioning policy formulated on several occasions. Up until 1998, the O.M.D.H. called for dialogue to settle all cases of human rights violations, expressing willingness to help in finding a final, just solution. Upon being informed of the fate of all victims of enforced disappearance, the O.M.D.H proposed the establishment of a joint committee, comprising members from the Advisory Council on Human Rights, the ministries of Justice and Human Rights, as well as members of human rights associations, to determine the financial compensation due by contacting representatives of the persons concerned, with the objective of closing the file once and for all¹². In a communiqué issued at the close of its national congress held on 25 November 1999, the O.M.D.H called for the adoption of a new approach to solving the dilemma of enforced disappearance and for the establishment of an independent body. c. In its approach, the Moroccan League for the Defence of Human Rights (L.M.D.D.H.) stressed the need to : • Activate the Advisory Council on Human Rights mechanism ; • Clarify all aspects of disappearance, reassure families and relatives of the disappeared persons, issue death certificates and hand over remains of the deceased, make reparation and pay compensation to survivors and families of the deceased. d. For its part, the Human Rights Defence Committee (C.D.D.H.) on many occasions stated its own approach to the issue through : • Registering its concern about the Advisory Council's methodology and arguing that the issue of disappearance should be entrusted to an unbiased independent body ; • Calling for an impartial investigation and the arrest and prosecution of offenders ;

12 Memo relating to the urgent calls for the protection of human rights, handed to the Prime Minister on 31 July 1998 and published under a communiqué issued by A.M.D.H on 14 September 1998.

Reference 22 - 0.47% Coverage

e. The Moroccan Forum for Truth and Justice (F.M.V.J.) constitutes a qualitative addition in the process of mobilizing civil society in support of a just settlement of the file of past gross human rights violations. The new assembly's preparatory committee went to the heart of the matter when it linked the challenge of settling the file to the ongoing changes taking place in the country and the political interests involved, by formulating the constituent elements of the problem in terms of the following : • How can we break with the past without leaving through its pages and drawing lessons from it? • How can we release the frustrations resulting from oppression and human rights violations that are pent up in victims and society as a whole? • How can we immunize the country and keep future generations safe from the causes and effects of such oppression and violations? • How can we strike the necessary ethical and human balance between public recognition of the responsibility of the State and State officials for the arbitrary acts perpetrated and the persecution, humiliation, stripping of dignity and soiling of reputation, violation of physical and mental integrity, deprivation of family ties and opportunities to lead a normal life, as suffered by thousands of victims, on the one hand, and political compromises and settlements aiming at reconciliation and democratic transition, on the other? • The Forum drafted in March 2001 its Declaration "For Truth and Equity", based upon a central argument revolving around "Recognizing the State's responsibility, establishing the truth about grave human rights violations, calling for those responsible to be held accountable, making reparation for the victims and safeguarding individuals and society from State human rights crimes".

f. The contribution of human rights associations based abroad

Moroccan resident associations, particularly in Europe, played a major role in publicizing the human rights situation in Morocco by rallying civil society abroad in solidarity with victims of grave human rights

violations in our country and in support of victims and families as well as of human rights organizations. We recall in this respect the prominent role played by Moroccan workers associations in France, Belgium, the Netherlands, Germany and Spain alongside the Association of

Reference 23 - 0.36% Coverage

Relatives and Friends of Persons Whose Fate is Unknown and Morocco-based human rights associations, sensitizing political actors and local and international law associations to call for the clarification of the fate of disappeared persons and the release of political detainees in Morocco.

These associations further organized demonstrations, held colloquia, issued reports on the human rights situation, established contact with the United Nations, the European Parliament and local and regional organizations, encouraging them to send delegates to attend political trials and conduct fieldwork research into enforced disappearance and arbitrary detention. Human rights activities like those conducted by these associations abroad had some positive bearing on the release of a number of political detainees and constituted a major factor in the momentum achieved in progress towards a better human rights situation. The majority of victims of forced exile benefited from the Royal amnesty decreed in 1994. g. The National Symposium on Grave Human Rights Violations was held on 9-11 November 2001 in Rabat, on the initiative of the Moroccan Association for Human Rights, the Moroccan Forum for Truth and Justice and the Moroccan Organization for Human Rights. The Symposium reviewed with grave concern the official management of the pending files and the evasiveness in responding to the pleas of the Moroccan human rights movement regarding the following : • Uncovering the truth ; • Making reparation and paying financial compensation to victims, reinstating victims and society and preserving the memory ; • Taking further actions towards bringing domestic laws into conformity with international conventions ; • Effecting political, constitutional and institutional reforms.

Reference 24 - 0.06% Coverage

In its investigations concerning the gross violations of human rights, the Commission adopted an approach based on the involvement of all those having an interest in this matter, and especially former victims or their families. The Commission's methods depended on the following basic elements :

Reference 25 - 0.12% Coverage

1. the data Collection stage Before beginning to investigate the file of persons of unknown fate, the Commission listed all sources of information, which enabled it to prepare reference lists by depending on :
• Reports of national non-governmental organizations involved with human rights ; • Reports and memoranda of the Advisory Council on Human Rights ; • Rulings issued by the former Arbitration Commission and the relevant files ; • Reports and rulings of international bodies and organizations involved in human rights that were relevant to the subject ; • Reports of the UN Work Group on Enforced Disappearance ;

Reference 26 - 0.03% Coverage

• Reports of the International Committee of the Red Cross ; • The archive of the former Ministry of Human Rights ; • Information coming from official sources ;

Reference 27 - 0.27% Coverage

Immediately after the declaration of independence on 18 November 1955, a struggle broke out between the various factions that went through various phases and was characterized by violence, which gave rise to grave human rights violations. These violations targeted political actors with different affiliations and with varying degrees of responsibility in the State. These violations took the form of abduction and detention in secret centres, torture, and gunning people down on the public street or torturing them to death in detention centres. The main factions and groups involved in the struggle were the Army of Liberation and Resistance with its different groupings, including the "Secret Organization" and the "Black Crescent", the Istiqlal Party (PI) and the Democratic and Independence Party (PDI). While it really falls to historians to study the period, data obtained by the Equity and Reconciliation Commission in the course of its attempt to describe the contexts in which the above-mentioned violations were perpetrated suggest that this tension and conflict can be traced back to differences about the meaning, content, and extent of independence, and conflicting views about national unity, the handling of the decolonization of the Moroccan border cities and regions still under foreign domination, and the construction of a modern nation state.

Reference 28 - 0.14% Coverage

The Commission considers the various centres mentioned above as unlawful detention centres and there is not the slightest doubt that the acts committed there constitute grave violations of human rights. It is, in fact, well established that a great number of citizens were victims of abduction, detention, torture and assassination either because they were affiliated to a political group (principally the PDI) or a Resistance Movement group, or because they were considered traitors and collaborators in the pay of the colonial authorities. In view of the nature of its role, it is the State's responsibility to guarantee right to security of person, the protection of property and the right to life.

Reference 29 - 0.25% Coverage

The Commission received petitions in which those who submitted them described how relations of theirs had gone missing. Following this up, the Commission has gathered all similar cases that have been considered for years as cases of unknown fate or disappearance. It has worked to prepare and study these cases, and has sought to obtain information from the apparatuses involved who were considered responsible for the events referred to in these petitions, and was careful to complete the relevant information by receiving communications from their relations and acquaintances. The Commission has received official documents from the Royal Armed Forces, the Royal Gendarmerie and the General Directorate of National Security, and it has also reviewed a part of the archive of the Ministry of Human Rights. The documents received from the Royal Armed Forces contained detailed information, including lists, pictures and data about different cases linked to the investigations that its departments carried out concerning cases of disappearance and unknown fate that were subject of investigations by the Commission and requests for clarification by the International Committee of the Red Cross. Studying them enabled the Commission to come to the following conclusions :

Reference 30 - 0.12% Coverage

This relates to 67 persons who were captured following armed clashes and were handed over to the International Committee of the Red Cross, which transferred them to Tindouf in the south of Algeria on 30 October 1996. After perusing the archive of the former Ministry of Human Rights and the results of the investigations carried out by the public authorities concerning the cases submitted to the government by the UN work group involved with enforced disappearance, and which were handed over to this group in

its meeting held in November 2005, the Commission was able to conclude that 15 had died natural deaths.

Reference 31 - 0.37% Coverage

Abdelhak Rouissi's family submitted to the Commission a petition requesting an inquiry to be launched into the circumstances in which their relative disappeared, including information about his political activity and the circumstances attendant on his disappearance. As stated in the petition, Abdelhak Rouissi was abducted on 4 October 1964 from his home on Hassan II Avenue, near Oliveri Café, in Casablanca. The family was later informed of his disappearance by a friend of his. The victim's father had previously filed a complaint regarding his son's disappearance with the Public Prosecution in Casablanca. The Bank of Morocco (Bank Al-Maghrib) in turn informed the judicial police of his disappearance but to no avail. Upon inspection of his apartment, in the presence of his father, the judicial police found his bookshelf, wardrobe and other personal belongings scattered round the room. They also found bloodstains on the washbasin and on the victim's shirt and slippers. According to testimony by a relative, Abdelhak Rouissi had previously received threats by policemen prior to his abduction. In October 1998, the Advisory Council on Human Rights mentioned Abdelhak Rouissi's name in the List of 112, among a group of persons who disappeared in obscure circumstances and whose fate was unknown. Based upon a petition by the family, the Commission's Chairman heard a witness who requested to remain anonymous. He was not an eyewitness but offered information obtained from policemen alleging to have recognized Abdelhak Rouissi in a detention centre years after his disappearance, without further elements to allow the Commission to confirm or refute the allegation. The Chairman also heard an official in Casablanca Provincial Security department who said that the person concerned had never been wanted or arrested.

Reference 32 - 0.26% Coverage

The Commission launched an inquiry into Houcine Elmanouzi's case to uncover the truth about his disappearance after he had been abducted in Tunisia on 29 October 1972 and surreptitiously transported to Morocco. The Commission further collected and analyzed all information available on the case provided by the family, human rights organizations and the Advisory Council on Human Rights, information regarding Houcine Elmanouzi's abduction, detention in an illegal detention centre, and his escape and disappearance after he was recaptured. The Commission held a meeting with the family on 11 March in the Commission's offices, in the presence of the family lawyer. During the meeting, the family offered the information available on their relative up until 19 July 1975, the day when he was recaptured after he had escaped from a detention centre which the family alleged to be Fixed Point (PF) 3. Among the documents which the family submitted to the Commission was an unsigned death certificate delivered to the family by the Advisory Council on Human Rights attesting that he had died on 17 July 1975. The family called for the clarification of their relative's fate after this date and provided the Commission with the names of witnesses to be heard in connection with the case.

Reference 33 - 0.12% Coverage

The Commission sought to explain the circumstances attendant on the events during which the grave violations of human rights occurred, by depending upon in situ investigations and communications from victims and witnesses, and conducting academic studies and research. The types of information relied on in analyzing these violations and the responsibilities of the state apparatuses vary along with the tasks entrusted to the Commission and the activities that it carried out to interpret these tasks on the ground. The main sources depended upon in this field are the following :

Reference 34 - 0.18% Coverage

1. Enforced disappearance The lack of a precise definition of enforced disappearance in Moroccan law, in addition to the fact that it is a combination of violations resulting in the infringement of all internationally protected human rights, chief among which is the right to life, led to it being given many descriptions including "those of unknown fate", "abducted - fate unknown", and "abducted". However, these descriptions do not include only enforced disappearance according to the internationally recognized definition, but also refer to other forms of arbitrary deprivation of freedom, which lead in many cases to the deprivation of the right to life. This is either because of abuse of authority or because of the disproportionate or excessive use of public force when facing civil disturbances, or as a result of exposure to torture and ill-treatment, or through armed confrontations.

Reference 35 - 0.04% Coverage

Human rights covenants and agreements guarantee the right to life as a basic right on which all other human rights are based. It is also one of the rights which are not subject to

Reference 36 - 0.45% Coverage

Analysis of the files presented to it concerning the events occurring during the years 1965, 1981, 1984 and 1990, the investigations and the studies carried out by the Commission, enabled it to reach the following conclusions : • Those disturbances saw the commission of grave violations of human rights mainly represented in infringement of the right to life of a number of citizens including children and also persons who had no involvement in those events ; • Those violations resulted from a failure to abide by international standards and principles in the field of human rights concerning the conditions and limitations on the use of public force. This led to the disproportionate and excessive use of this force resulting in deaths ; • The results of the investigations carried out, as well as the analysis of the events linked to those disturbances enabled the Commission to uncover the fact that the authorities opened fire with live ammunition, and failed to resort to other methods in order to disperse the demonstrations without causing deaths ; • Evidence from different registers and testimonies relating to the incidents in question show that many victims died as a result of gunshots in the skull, the rib cage or the abdomen ; • The Commission registered a significant number of children among the dead, some of them no older than ten years old ; • In some cases, the apparatuses intervening opened fire into houses through open windows or through doors, and hit people including children, old men and women, some of whom died as a result of bullet wounds. These facts are corroborated by testimonies presented before the Commission, as well as by mortuary registers, which establish the occurrence of cases where corpses were removed from inside houses ; • When they removed the corpses of those who had been wounded while inside their houses, the intervening apparatuses prevented the families of the deceased from knowing where their bodies had been taken. In addition, the place of burial was concealed. Indeed, the authority refused to record the dead in the death registers held by the offices involved ; • Officials refrained from offering help and assistance to wounded citizens, including children who died as a result of gunshot wounds ;

Reference 37 - 0.20% Coverage

The mission that the Commission undertook in implementation of its mandate constituted a significant step in promoting the right to know the truth through the unusual means and forms it devised, which

helped to increase the likelihood of uncovering the truth about the grave violations of human rights which our country witnessed during the previous period. The oral testimonies, as one of the sources used by the Commission, helped to clarify the circumstances surrounding the facts linked to the events object of its investigations. However, in some cases, their limited and fragmentary nature was apparent, when the same events were talked about in different and sometimes contradictory ways by those who had experienced them. This meant that they were only partially helpful in uncovering the truth in specific cases. This obstacle was overcome by cross-checking the data found in these testimonies with information derived from other sources, especially official documents and registers.

Reference 38 - 0.01% Coverage

The Advisory Council on Human Rights Publications 2009

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Reference 2 - 0.68% Coverage

1. Reparation in international human Rights law

Reparation has been the subject of increasing international interest as a result of the status it has acquired in the jurisprudential and theoretical innovations of the Human Rights Committee and the other committees involved. In addition to the political efforts expended in the framework of the above-mentioned committee, these innovations led to the adoption of a document including the basic principles and guidelines on the right of victims of gross violations of international human rights and humanitarian law to remedy and reparation².

1.1. Reparation according to International Standards of Human Rights

Numerous international instruments relating to human rights, both global and regional, contain express provisions concerning the right of all individuals to be able to avail themselves of "means of redress" before a competent body when they become victims of grave violations of human rights. Some of these instruments refer specifically to the right to compensation in accordance with the law (Article 10 of the American Convention on Human Rights), and the right to appropriate compensation (Article 21.2 of the African Charter on Human and Peoples' Rights). Other provisions speak more specifically to the subject like Article 9 (Paragraph 5) of the International Covenant on Civil and Political Rights, and the European Convention for the Protection of Human Rights and Fundamental Freedoms, which affirms "the right to reparation". Moreover, the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 14 Paragraph 1) affirms the necessity of ensuring that "the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation". In harmony with this, Article 14, Paragraph 6 of the above-mentioned Covenant and Article 11 of the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment contain express provisions asserting the victim's right to compensation in accordance with the law of each state. For its part, the International Convention on the Elimination of All Forms of Racial Discrimination affirms in Article 6 provisions relating to the victim's right to seek "just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination". Article 68 of the American Convention on Human Rights rules that compensation is due to the victim, and Article 63 Paragraph 1 states that "the consequences of the measure or situation that constituted the breach of such right or freedom should be remedied, and fair compensation should be paid to the injured party".

2 The Human Rights Committee is a body composed of independent experts who monitor the implementation of the International Covenant on Civil and Political Rights by member states.

Reference 3 - 0.08% Coverage

1.3. Reparation in the jurisprudence of some international bodies involved in human rights.

1.3.1. The Human Rights Committee

The issue of compensation of victims of violations of human rights referred to in the International Covenant on Civil and Political Rights is prominent in the jurisprudence of the Human Rights Committee⁴ as a basis for the following rights:

Reference 4 - 0.04% Coverage

4 The Human Rights Committee is a body composed of independent experts who monitor the implementation of the International Covenant on Civil and Political Rights by member states.

Reference 5 - 0.18% Coverage

The jurisprudence of the Human Rights Committee insists, particularly when dealing with Articles 6 & 7 of the International Covenant on Civil and Political Rights, on the relationship between the means of redress that the victim(s) have available to them, whose goal is to ensure non-repetition, and the procedures that must be adopted by the state involved. Concerning the duty of member states to ensure that everybody whose rights have been violated has the right to benefit from effective means of redress (Article 2 Paragraph 3), the Committee announced time and again that states were obliged to adopt effective procedures to deal with the violations. It also enumerated a number of obligatory procedures depending on the nature of the violations and the state of the victim, including:

Reference 6 - 0.01% Coverage

1.3.3. The Inter-American Court of Human Rights

Reference 7 - 0.13% Coverage

From this innovation, it appears that the Inter-American Court of Human Rights adopted a similar approach to that adopted by the Human Rights Committee, in that it considered that the state's duty to prevent the occurrence of violations is linked to the duty to remedy the situation and grant reparation. Among the means of remedying the situation referred to by the court was the necessity of conducting an inquiry into the violations committed, punishing⁵ Velasquez Rodriguez V Honduras Judgement of July 29, 1988, Human Rights Law Journal Vol 9 1988; 212.

Reference 8 - 0.41% Coverage

the victims, and granting appropriate compensation to the victims. In other words, reparation for injuries means affirming justice towards society, those responsible for the violations, and the victims, which means that compensation procedures are included as part of that justice. In this judgement, the court relied on Article 63.1 of the American Convention on Human Rights, ruling that the state involved is obliged to grant fair compensation to close relatives of the victim within six months of the issuance of that judgement, unless an alternative agreement is reached. The form and the amount of the compensation

were also fixed by the court, which examined the case once again on 12 July 1989 and issued a decision regarding the matter of compensation⁶. In its decision, it fixed the extent and the content of the fair compensation that must be granted to the family of the victim. The court explained that the duty of appropriate compensation for injuries resulting from failure to meet an international obligation is one of the principles of international law. It considered that compensating the victim requires complete reparation for the injuries that he has suffered, including rectifying the former situation and remedying the situation resulting from the material and non-material injuries, including moral injuries.

1.4. Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of Human Rights

The document entitled "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of Humanitarian Law" is one of the most important documents whose contents were borne in mind by the Commission as it formulated its approach to reparation for injuries.

Reference 9 - 0.21% Coverage

Principle 5 of the document defines victims as "persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term "victim" also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization". "A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim". ⁶ Decision of the Inter-American Court of Human Rights, Series C, No.7 (1989).

Reference 10 - 0.15% Coverage

According to Principle 9 of the document, "adequate, effective and prompt reparation is intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law. In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for acts or omissions which can be attribute to the State and Constitute gross violations" (...) and shall "establish national programmes for reparation and other assistance to victims", while ensuring that the content of those programmes is proportionate to the gravity of the violations and the injuries resulting from them.

Reference 11 - 0.16% Coverage

Principle 10 urges states to "develop means of informing the general public and, in particular, victims of gross violations of international human rights law and international humanitarian law, of the rights and remedies and of all available legal, medical, psychological, social, administrative and all other services to which victims may have a right of access". It also states that victims and their representatives should be entitled to seek and obtain information on the causes leading to their victimization and on the causes and conditions pertaining to the gross violations of international human rights law and serious violations of international humanitarian law and to learn the truth in regard to these violations.

Reference 12 - 0.65% Coverage

to possessions and economic results relating to the victim. As a result of this, when victims were given the opportunity to talk about their sufferings resulting from the violations they had been subject to, during public hearings for example, they gave priority to talking about financial compensation because of the accounting approach to reparation that had become engrained in them; • The Commission therefore came to the conclusion that a reparation programme must not concentrate on financial and accounting considerations by giving priority to documents of an economic nature, but rather should focus on those that talk about suffering. Such a programme makes people aware that the financial benefit distributed is limited and will not cover the real and mounting economic injuries. In addition to financial compensation that can be granted to victims, reparation is also concerned with other forms of reparation linked to procedures concerning transitional justice, including for example admitting responsibility for violations and uncovering the truth about what happened; • None of the various reparation programmes around the world produced results satisfactory to all the victims. Trying to apply financial compensation in favour of all the victims in the experiences that tried to deal with violations of human rights that were committed in an intense manner has proved to be very expensive and does not always end up satisfying all the victims. This is in the knowledge that it is a mistake to consider the matter simply in terms of financial costs, since reparation programmes have in view a goal that transcends financial compensation. They are linked to structural changes since what is at stake is how to confront cases of subjection to intense and systematic violations; • When it is a case of dealing with scattered and isolated cases springing from independent causes, one does not face the same challenges that one does when dealing with cases happening at the same time, springing from structural and systematic causes. There is a difference between ordinary crime and organized crime. Although the two cases appear similar when one is dealing with reparation, there is a difference between compensation in scattered cases, which is a response to ordinary crime, and a general treatment that is a response to organized crime; • Attempting to apply the principle of total restitution is a danger to the process of democratic transition. In cases where it was applied, it led to divisions among the victims, dissipation of the efforts of the state, and the entrenchment of inequality because it sends an implicit message that violation of the human rights of the rich is more serious than violation of the rights of the poor, especially as it is being carried out in the context of democratic transition, one of whose basic goals is to strengthen an understanding of citizenship;

Reference 13 - 0.09% Coverage

The Arbitration Commission drew its inspiration from the international criteria relating to grave violations of human rights and adopted the relevant provisions of domestic law. In the light of that it arrived at principles that blended the constitutive elements of the definition and the justifications regarding the two main categories of violations that fall within its mandate.

Reference 14 - 0.32% Coverage

2. conclusions from the assessment of the experience Undertaking an objective evaluation of the work carried out by the Arbitration Commission requires that one remember the circumstances in which it was established. It was set up in response to a recommendation issued by the Advisory Council on Human Rights (CCDH) calling for a settlement of the enforced disappearance file. It restricted the issue of dealing with the violations to which victims of enforced disappearance were subjected to financial compensation. However, the sphere of compensation was broadened pursuant to the royal decree issued on 16 August 1999 ruling that the Commission should be set up and expanding the mandate of the Commission to include arbitrary detention. Despite the constraints that the said commission faced, represented in particular in the limited mandate with which it was invested, it left behind a significant body of work that

the Equity and Reconciliation Commission depended on as it continued the work of the former commission concerning financial compensation to victims depending upon the same arbitration basis as it depended on in exercising its competences. This work also enabled it to develop a new concept of reparation by taking into consideration the developments taking place in international law and the conclusions from the experience of truth committees round the world while bearing in mind the specificities of the Moroccan experience.

Reference 15 - 0.28% Coverage

The innovations formulated by the Independent Arbitration Commission in the context of the Moroccan approach to settling the past of grave violations of human rights can be summarized under the following main points: • Clear acknowledgement of the state's political and civil responsibility for the grave violations of human rights committed in the past. This was formulated clearly in all aspects of the positive arbitral decisions, in addition to the fact that the elements of this responsibility were highlighted in the decisions to refuse reparation; • Broadening the scope of innovation as regards subject matter competence, which came to include, in addition to enforced disappearance and arbitrary detention, other violations at the head of which were those resulting from the civil disturbances that saw the occurrence of grave violations of human rights; • Uncovering past events that were the occasion of grave violations of human rights, which helped significantly to pave the way for the issue of discovering the truth and analyzing the contexts linked to those events; • Organizing individual hearings of victims, which it is impossible to imagine happening in front of an official commission outside the judicial settlement. The

Reference 16 - 0.24% Coverage

The Independent Arbitration Commission represents a qualitative advance in the process of developing the Moroccan approach to settling the past grave violations of human rights. Despite its limited mandate, it was able to make significant progress in the area of reparation relating to financial compensation in particular, and to give the opportunity to victims who presented petitions to it to express their suffering. Thus it represented an important stage in the process of public acknowledgement of the reality of the grave violations of human rights and establishing the state's responsibility for them. It also paved the way for the establishment of the Equity and Reconciliation Commission through the dynamic it created within society. This is mainly represented in the intellectual struggle it kindled concerning the necessity of completing the process of settlement through raising the subject anew within what came to be internationally known as transitional justice in the framework of the democratic transition that the country is experiencing.

Reference 17 - 0.37% Coverage

The Commission's philosophy towards reparation was based on the basic principles of justice and equity, and on what has come to be known round the world today as transitional justice, since reparation is a set of procedures that the state must take to strengthen justice in order to remedy or make reparation for the grave violations of human rights in a manner commensurate with their gravity and the injuries suffered by the victims as a result. The Commission's comprehensive approach is based in particular on the following: • Uncovering the truth and drawing lessons, in such a way as to preserve the memory and furnish guarantees of non-repetition; • Bandaging the wounds of the past by granting justice to victims, reinstating them and the whole of society and considering reparation as an official acknowledgement by the state that the victims and their families are fellow citizens; • Reconciling Moroccans with their history and with themselves, with the intention of releasing their energies, restoring trust between all constituents

of society, involving everybody in building a state based on law and institutions and promoting the culture and values of human rights; • Putting the process of truth, equity and reconciliation in the context of democratic transition, and strengthening the trust of citizens in democratic institutions; • Considering the issue of reparation as more than a set of measures or procedures involving individual or group cases. Above all this, it is a process aiming at strengthening the feeling of citizenship; • Strengthening group solidarity bearing in mind the rights of present and future generations;

Reference 18 - 0.43% Coverage

The Commission's statute referred expressly to the concept of collective or community reparation. This enabled it to establish its approach to the subject on the results and findings of the on-site visits to the regions that had experienced incidents in the past and were characterized by the occurrence of grave violations, or those in which were located illegal enforced disappearance or secret detention centres. To the same extent, the Commission was able to use the conclusions of the studies and research available to it, and the analyses and discussions conducted concerning them, in order to develop a mediation mechanism in the fields of economic and social development in the regions involved. The Commission was also helped in formulating this new direction by the participative approach it had adopted with all those involved throughout its work in the regions involved: during the investigations it conducted to uncover the facts about enforced disappearance; when it was completing the information and details concerning a group of files submitted to it; when it was managing the cases linked to the burial places; and through the organization of public hearings in those regions. The Commission also involved the human rights activists of civil society, working in the field of local development and also the development agencies and institutions working in those regions. On this basis the Commission was able, in cooperation and partnership with the abovementioned parties, to examine economic and social development programmes. This meant that community reparation could take on its full meaning in the approach to reparation, which helped the Commission to make proposals to strengthen existing projects and to propose that attention be given to other fields that were not mentioned in the projects that had been planned. This strengthened the community reparation approach and the mediation mechanisms.

Reference 19 - 0.19% Coverage

In incorporating the gender approach, the Commission was careful to supplement its conception of this field in the following ways: • Supplementing and processing the data it had about women victims, and deriving trends or classifications in terms of groups, incidents, regions and violations; • Revisiting the data and the information relating to women, derived from the results and conclusions of the field visits organized by the Commission when it was conducting investigations or organizing public hearings or other activities; • Categorizing the particular violations and injuries that were suffered by women, developing the conceptual framework for the Commission's philosophy on this basis, and translating it into different types of reparations; • Conducting a national study on women and grave human rights violations of the past.

Reference 20 - 0.07% Coverage

- Open dialogue with the different actors and associations involved in citizenship, human rights and local development, operating in the regions which were subject to violations in the past; • Mediation so that the injured regions might benefit from economic and social development programmes and receive justice and reinstatement.

Reference 21 - 0.14% Coverage

The Commission has used the following main criteria in estimating financial compensation for victims of grave violations of human rights: • Considering deprivation of liberty as a common criterion for all the victims. This means that financial compensation will be equal for all, while bearing in mind the periods they spent in enforced disappearance or arbitrary detention; • Considering the special nature of enforced disappearance in that it is a combination of abuses that violates a number of basic human rights, at the head of which is the right to life. At the very least, it constitutes a threat to the continuation of that right;

Reference 22 - 0.06% Coverage

- distinguishing enforced disappearance from arbitrary detention in view of the gravity of the former violation and the fact that it is a combination of violations that results in the violation of a number of basic human rights, in particular the right to life.

Reference 23 - 0.07% Coverage

The Commission considers the health care of victims of grave violations of human rights as one of its work priorities, and has included it in a comprehensive approach to reparation. Therefore, since it was established, it has taken measures to offer health services to victims and to intervene in emergencies by:

Reference 24 - 0.33% Coverage

In order to diagnose the conditions of persons complaining of physical or psychological illnesses, the Commission analyzed information given in medical documents contained in victims' files and with that as a basis, conducted a study of the health situation of victims. The main goal of this study was to assess the nature and the severity of the illnesses that the victims of human rights violations were suffering from and to look for solutions so as to provide permanent cover for their treatment, both for individuals suffering from illnesses or disabilities, and for the group of victims and their rightful claimants. Analysis of the files submitted to the Commission showed that 9,992 of them (64.1%), related to victims or rightful claimants who had stated that they suffered from injuries to health. Of these, there were 2,006 (20.1%) whose files contained medical documents of high or medium worth for proving their health situation and/or who had previously undergone medical examinations either in the Commission's medical unit or in the framework of the examinations that the Commission organized on-site in partnership with the Ministry of Health. To analyze the data contained in the medical documents and to formulate the diagnosis or diagnoses and the main findings concerning the case of each victim, the Commission used a group of doctors who were either experienced general practitioners or specialists, who were put at its disposal by the Ministry of Health.

Reference 25 - 0.01% Coverage

- Victims of grave violations of human rights;

Reference 26 - 0.11% Coverage

- Classification of the violations by means of an initial harmonization of the facts contained in the petitions. By interpreting the competence invested in it, the Commission was able to harmonize the violations asserted according to the provisions of its statute, international human rights standards and

relevant national legislation. In addition to enforced disappearance and arbitrary detention, the Commission uncovered other violations as detailed in the table below:

Reference 27 - 0.50% Coverage

2. the method of processing files for final decisions After the initial analysis and classification of the files, the Commission started on the second stage, the task of explaining competence as regards reparations arising from the gross violations of human rights. It also harmonized more carefully the facts alleged in the petitions in accordance with the provisions of national legislation and those of the Commission's statute, while bearing in mind the relevant international human rights standards. In order to do this, and in view of the fact that the majority of files were deficient in terms of information and details, the Commission sought to determine and delimit the documents required in order to process the files in readiness for final decisions and recommendations to be issued concerning them. Therefore, the Commission corresponded with the petitioners, and organized field visits to the regions where a large number of petitions originated. Since some facts that had been asserted and some incidents connected with violations that were the subject of numerous petitions were cloaked in obscurity, the Commission conducted studies, research and investigations and heard trustworthy witnesses, some of whom had actually participated in the said events. This enabled the Commission to uncover the truth about these incidents, as regards their scope and dimensions, and the nature and extent of the violations committed during them, the bodies to whom the violations were attributed, the number and age of the victims at the time of the incidents, and the length of the violation in case of detention. After comparing all this with the facts asserted in the petitions, the Commission determined which of the requests relating to such events were accepted. Overall, it can be said that the initial classification and analysis of all the files submitted to the Commission, made it clear that the majority of them simply contained letters that lacked information relating to the identity of the persons involved and details and documents relevant to the claims made in the petitions. After the Commission opened files on all the petitions submitted to it, it began work on completing the information and details relating to them by:

Reference 28 - 0.32% Coverage

- Define the files that fall within the Commission's jurisdiction and the persons who deserve compensation according to the criteria, standards and elements of assessment used by the Commission;
- Define the files that need evidence to prove or refute the allegations contained in them concerning the subjection of the persons involved to violations of human rights;
- Define the cases relating to persons of unknown fate in order to refer them to the Commission's work group on investigation so that they might study them and carry out the necessary investigations regarding the claims found in them, then return them to the work group on reparation so that they might make a final decision on them regarding reparation in the light of the results arrived at. The processing also included the study of all the files submitted to the Commission, one by one, in terms of the following:
- Study of the claims and facts mentioned in the petition and comparing them with the completed details and documents;
- Preparing summaries of those facts and updating them in the light of new elements appearing from the completion of the information and direct hearings;
- Classifying the files according to the incidents and groups, and preparing reports and a special study regarding each incident based on data and information available to the Commission from different sources, documents and studies and the investigations it carried out;

Reference 29 - 0.38% Coverage

After studying the documents contained in some of the files submitted to it and the results of investigations it has conducted, the Equity and Reconciliation Commission has come to the conclusion that the violations that the persons in question were subject to fell under the category of enforced disappearance in accordance with the definition enunciated in the provisions of Article 5 of the Commission's statute. The Commission has established that this disappearance was preceded by detention by state apparatuses without any legal instrument or order by the judiciary, that they were detained in an irregular detention centre, and that they were deprived of all the legal guarantees relating to detention enunciated in national legislation and international human rights law. Moreover, their fate and place of detention remained unknown to their relatives despite the approaches they made to the competent public authorities. In fact, they faced secrecy and denial whenever they asked about them. The Commission has also established the deaths of victims as a result of the harsh conditions of detention and the torture and ill-treatment they were subject to. After studying the files submitted to it and the documents they contained, and after examining the physical and moral injuries that the petitioners suffered, consisting mainly of suffering, pain, and deprivation resulting from the disappearance of their relatives in the said circumstances, the Commission decided, on the basis of the assessment elements (deprivation of freedom, harsh treatment, deprivation of the right to life, concealment of fate), and within the framework of justice and equity, to issue decisions compensating the victims.

Reference 30 - 0.24% Coverage

- arbitrary detention without trial The Commission received a number of petitions claiming compensation for injuries suffered by the petitioners as a result of arbitrary detention in irregular detention centres. After examining the documents submitted, the Commission confirmed the truth of the petitions' claims that the persons involved had really been subject to detention because of their political, associational or trade union activities, and that during their detention they did not benefit from the guarantees enunciated in national law and international human rights standards, especially those provisions relating to placement in custody, its length and rules, and the requirement that they should not be subject to torture or ill-treatment. In view of the fact that this detention took place outside the law, which makes the state responsible and liable to pay reparations to the victims, bearing in mind the violations of their rights as citizens and as human beings and the pain they had to bear as a result of the circumstances of their detention

Reference 31 - 0.45% Coverage

- arbitrary detention followed by a trial The petitions submitted by those in question sought compensation for physical or moral injuries they or their relatives suffered as a result of arbitrary detention they had been victims of. After examining the official documents submitted to it, the other papers contained in the files of the persons in question and after the investigations it conducted, it came to the conclusion that the persons in question had really been subject to detention. On the basis of the circumstances of this detention, the Commission came to the conclusion that it took place with no respect for the steps and procedures enunciated in the law, and that the guarantees enunciated in national legislation and international human rights standards, especially those provisions relating to placement in custody, its length and rules. In addition, the arbitrary nature of it all influenced what happened during detention and the events that took place afterwards. Although it is up to the judiciary and the bodies and apparatuses attached to it or supervised by it to prosecute the perpetrators of deeds that infringe the law and to punish them in order to preserve public order and the safety of individuals and communities, their work will not acquire the necessary legitimacy unless it takes place within the framework of the law and a concern to respect the rights of citizens, in the knowledge that any action infringing the law makes the

state liable and requires reparations for the victims. In view of the violations of their rights as citizens and human beings, and the pain that the persons in question suffered as a result of the circumstances of detention and events that took place during it and as a result of it, in view of the physical and moral injuries that the victims and their families suffered, and bearing in mind the principles of equity and reconciliation, the Commission stated that they deserved reparations and should receive financial compensation.

Reference 32 - 0.24% Coverage

The Commission received petitions seeking compensation for injuries suffered by persons as a result of arbitrary detention that they stated that they had been subject to. However, the investigations conducted by the Commission into the claims contained in these petitions neither conclusively confirmed nor refuted the detention. Nevertheless, the Commission considered that the inability to conclusively confirm the facts claimed and the petitioners' inability to produce conclusive documentation, justifies the use of provisional assumption of good faith on the part of the petitioners. This requires that, after the facts have been checked by incorporating them into their contexts and examining them in terms of their gravity and their consistency with the injuries that resulted from them, the persons in question should be compensated in harmony with the requirements of equity and reconciliation and turning the page on the gross human rights violations in our country's past. On this basis, the Commission has decided to pay compensation to petitioners in cases of this type.

Reference 33 - 0.40% Coverage

- persons subject to arbitrary detention In view of the fact that the procedure according to which the detention of the persons in question took place was not in some respects consistent with the law, which lent the detention they were subject to an arbitrary nature, and in view also of the violation of their rights that they suffered as a result, the pain that they endured due to the circumstances of detention and its aftermath, and the physical and moral injuries suffered by them and their families, and bearing in mind the principles of equity and reconciliation, the Commission stated that they deserved reparation and financial compensation. - persons shot, and then detained and tried After studying the relevant files, the Commission came to the conclusion that the petitions presented by the persons in question sought compensation for physical and moral injuries suffered by them as a result of the bullet wounds and the subsequent arbitrary detention that they had been subject to. The Commission considered that these civil disturbances should have been treated in a way that provided for proportionality between the scale of the events and the force used to confront them. This is in accordance with the provisions of international human rights law and in harmony with the requirements of maintaining public order and safeguarding the physical safety of citizens. Moreover, as stated above, the detention that the petitioners were subject to took place in accordance with a procedure that was not in some respects in conformity with the law, which made the detention seem arbitrary. On this basis, and bearing in mind the principles of equity and the requirements of reconciliation, the Commission decided to compensate the persons in question in the cases submitted to it.

Reference 34 - 0.25% Coverage

The Commission received petitions from the rightful claimants of victims of the Skhirat attempted coup that took place on 10 July 1971 under the leadership of some officers in the Moroccan army. Study of the papers contained in the files submitted to it, and investigations conducted into the events mentioned in them, enabled the Commission to come to the conclusion that the persons who were shot during the

painful events mentioned, the majority of whom died as a result, were victims of group detention that took place outside the law carried out by individuals belonging to a state apparatus. Analysis of those events convinced the Commission that they constituted a grave violation of human rights in the form of arbitrary detention, lasting for a particular period under threat of armed force, of persons who held political opinions or who were involved in political activity, or were assumed to be so involved, and that the legal responsibility of the state was proved. These constitutive elements bring it within the jurisdiction of the Equity and Reconciliation Commission as defined in its statute.

Reference 35 - 0.34% Coverage

It was established that state apparatuses were responsible for the arbitrary detention that the persons in question were subject to as a result of their restraint in circumstances that lacked any legality, since this detention was not ordered by a judicial party, took place in an irregular detention centre, and the victims were deprived of all legal guarantees relating to detention as enunciated in national legislation and international human rights law. However, the Commission considered that these cases did not fall within its jurisdiction, since the detention, in the majority of cases, was not the result of political, trade union or associational activities, which it was competent to deal with in accordance with the provisions of Article 5 of its statute. When it was proved to the Commission, in certain cases, that the petitioners were detained for one of those reasons, it decided to compensate them, activating all the assessment elements applicable in this field. In view of the severity of the violations that the other persons were subject to, even though they did not fall within the jurisdiction of the Commission, and in view of the deprivation of their rights as citizens and as human beings, the pain they endured because of the conditions of detention and attendant events, the physical and moral injuries that they and their families suffered, and the psychological after-effects that resulted, the Commission decided to submit a special recommendation to grant reparations to the persons in question.

Reference 36 - 0.26% Coverage

After examining the cases submitted to it in the light of its statute, the provisions of international human rights law and international humanitarian law, the Commission came to the conclusion, after studying the papers in the files submitted to it and the results of the investigations that it had conducted, that the violations that the persons in question were subject to, although they were grave violations in accordance with the legal provisions referred to above, did not fall under the category of grave violations according to the definition enunciated in the provisions of Article 5 of the Commission's statute since the apparatuses of the Moroccan state were not responsible for them in that they were not committed by public officers pertaining to it or individuals or groups acting in its name or colluding with those apparatuses. However, the Commission came to the conclusion that the violations the persons in question were subject to had the requisite constitutive elements to describe them as enforced disappearance in that the people in question were abducted and detained in breach of the provisions of international humanitarian law, which criminalize

Reference 37 - 0.06% Coverage

- Persons who helped the security forces by force of circumstance, either voluntarily or as requisitioned or unpaid labour, bearing in mind that the last two do not constitute a grave violation of human rights according to the account of the events given by the petitioners.

Reference 38 - 0.11% Coverage

- cases of detention with no relation to political, trade union or associational activity Petitions were submitted to the Commission which, regardless of any violations of human rights or infringements of national legislation that the facts they relate might contain, were clearly not the result of the practice of political, trade union or associational activity. Thus they do not fall within the jurisdiction of the Equity and Reconciliation Commission according to the provisions of Article 5 of its statute.

Reference 39 - 0.11% Coverage

Regardless of any violations of human rights or infringements of national legislation that the facts contained in the petitions relating to what has been called the "Cleansing Campaign" submitted to the Commission might contain, they were not the result of the practice of political, trade union or associational activity. Thus they do not fall within the jurisdiction of the Equity and Reconciliation Commission according to the provisions of Article 5 of its statute.

Reference 40 - 0.03% Coverage

the Moroccan Sahara. Since the events relied on are not a violation of human rights, the Commission decided that the subject fell outside its competence.

Reference 41 - 0.16% Coverage

Petitions were submitted to the Commission seeking compensation for physical and moral injuries suffered by the petitioners as a result of arbitrary detention. However, the Commission came to the conclusion that the detention that the persons in question were subject to could not, in view of the provisions of Moroccan legislation and international standards of human rights, be considered as arbitrary. This is because the procedure within which the detention took place does not contain, in the opinion of the Commission after examining the papers in the files submitted to it, anything to indicate that it was outside the scope of the law. Therefore, the Commission decided to reject the petitions in question.

Reference 42 - 0.22% Coverage

- Zagora: tagounite-agdez The province of Zagora lies in the south-east of Morocco and includes about 25 caïdats like Agdez, Tagounite, Mhamid-Al-Ghizlane and Tinzouline. In order to formulate community reparation projects, the Dar'a Federation for Development, in coordination with the Equity and Reconciliation Commission and the Zagora section of the Moroccan Association for Human Rights, organized a study day on the theme Towards Community Reparation in Agdez and Tagounite, and for Sustainable Development in the Zagora region. This was held on 12 September 2004. The Commission also organized five visits to the region of Agdez and Tagounite in order to create links with the victims and the representatives of civil and political bodies. The representatives of civil society participated in the Preparatory Committee for the National Forum on Reparation for Injuries, and more than 18 associations from the region participated in proceedings of the Forum.

Reference 43 - 0.45% Coverage

- the Rif region The Commission was careful to involve civil society in the region in the formulation of community reparation projects. Representatives from it attended most of the activities organized on the

subject by the Amal Network, the l'lan Arrif Committee, and the branch of the Moroccan Forum for Truth and Justice. The Commission also made visits to the region to discuss specific projects with civil society activists and representatives of the inhabitants and the local authorities. The Commission held a number of meetings with the Abdul Karim Khattabi research group, which submitted a detailed memorandum on the subject of reparations in the area. It also received Mr Sa'id Khattabi, the son of Abdul Karim Khattabi at its headquarters. During that meeting, there were discussions about issues of reparations including the return of the remains of Abdul Karim Khattabi to Morocco. The public hearing organized in Al Hoceima also provided an opportunity to discuss issues of grave violations of human rights in particular and issues of community reparations in general. Bearing in mind that the Rif disturbances of 1958-9 require an in-depth academic study (gathering testimonies of victims and actors, examining the written archives, including those available in foreign documentary archives, a serious work involving cross-checking and analyzing ...), which is a task regarding which the Commission has not been able to achieve any advanced results; and bearing in mind that uncovering the truth concerning what happened during those events constitutes a key element of reconciliation, the Commission recommends in particular the following: • Including study of that stage as one of the priorities for the work of the Institute of Moroccan History which it has recommended should be set up; • Following up communications with the family of Abdul Karim Khattabi in order to study how to bring his remains back to Morocco in accordance with the wishes of both family and relatives;

Reference 44 - 0.06% Coverage

i. normative Violations The grave human rights violations of the past that the Arbitration Commission occupied itself with mainly involve enforced disappearance and arbitrary detention, and in the light of these violations, elements were deduced that came to constitute other violations.

Reference 45 - 0.16% Coverage

The Arbitration Commission was inspired by the international criteria related to grave violations and to the judicial and semi-judicial innovations to human rights. It used the provisions of relevant domestic law, and in the light of that it arrived at principles that blended the constitutive elements of the arguments and the justifications regarding the two main categories of violations that fall within its mandate. enforced disappearance: acts carried out by state apparatuses and represented in taking a particular individual without any legal right, depriving him of his freedom, and restraining him in a secret location, without giving out any information about him. He thus remains in

Reference 46 - 0.01% Coverage

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Reference 7 - 0.15% Coverage

foreword Since the beginning of the 1990s, Morocco has witnessed a series of reforms, with participation of the State, political forces, civil society associations, and in particular human rights associations. Without wanting to ignore the important and influential role played by the political opposition in adopting and promoting these demands, the appeals for reform gained an extreme importance for many reasons, including in particular : 1. They shed light on aspects of violations and gaps in legal guarantees ; 2. They reflect the level of awareness of the civil and human rights elite of the human rights culture ;

Reference 8 - 0.18% Coverage

They opened important arenas that helped to advance the process of settling the gross human rights violations of the past, and also made this process one of the mechanisms of reform. As the Equity and Reconciliation Commission presents its recommendations concerning the reforms necessary to guarantee non-repetition, it recalls the institutional, legal and political reforms that have already been introduced, and that have a direct role in promoting human rights, and individual and group freedoms. These reforms basically involve on the one hand the constitutional entrenchment of human rights and the creation of new institutional mechanisms to guarantee the protection of human rights, and on the other legislative reforms intended to enshrine that protection.

Reference 9 - 0.11% Coverage

1. The Constitutional entrenchment of human Rights The constitutional review of 1992 instated a group of provisions in the constitution that strengthened the rule of law. In particular, it contained : • An assurance that the preamble of the constitution would contain a reference to Morocco's adherence to human rights as they are universally recognized ; • The establishment of a constitutional council, one of whose tasks is monitoring the constitutionality of laws ;

Reference 10 - 0.72% Coverage

The establishment, by virtue of the 1992 constitutional review, of the principle of Morocco's commitment to the international conventions on human rights, is of historic importance. This was confirmed in the 1996 constitutional review, in that the third paragraph of the preamble states : "... Aware of the need of incorporating its work within the frame of the international organisations of which it has become an active and dynamic member, the Kingdom of Morocco fully adheres to the principles, rights and obligations arising from the charters of such organisations, as it reaffirms its determination to abide by universally recognised human rights". This provision possessed a dimension of great importance in terms of the constitutional order, in that it came after the definition of the identity of the state. In addition, the preamble did not content itself with confirming the importance of international conventions, but also refers specifically to commitment to the obligations relating to the three aspects of human rights provisions the convention focuses on, namely principles, rights and duties. On the incorporation in the constitutional charter of the commitment and referral to the international authority of human rights, a legal, procedural and jurisprudential controversy arose when amending the 1992 constitution, concerning the meaning of commitment and the concept of internationally recognized rights, and their relation to the contents of the obligations and commitments found in the relevant international convention. The highest authority in the country would offer interpretations of this constitutional provision when the late King Hassan II confirmed that "since the formulation of the previous constitution, the concept of human rights had come to constitute one of the pillars of international law". Moreover, numerous speeches by King Mohammed VI, delivered on numerous occasions, would shed light on the meaning of the constitutional commitment to human rights, in its cultural, civilizational, political and societal dimensions, in that human rights are the fruit of struggles and contributions by human beings of different religions and civilizations, and represent a continuous series of confrontations with the challenges they faced.

The letter sent by the King to the participants in the 34th International Conference of the International Federation for Human Rights (FIDH), held in Casablanca on 8 January 2001, contained the following: The fact that you belong to different cultures and geographical and religious spaces, and to various schools of thought is no more than an additional chapter in this continuous enrichment and adaptation to the specificities of the challenges that face humanity. We believe that human rights issues are the possession of the whole of humanity, with no precedence going to anyone, because they are the fruit of a historical process in the gestation of which participated human beings from different cultures and civilizations. Moreover, various peoples of the world, who yearned for freedom and justice, paid a high

Reference 11 - 0.27% Coverage

price to achieve it, through the struggles and tragedies of world wars, colonial wars, and waves of racism, fanaticism, terrorism and violations around the world. This process yielded significant gains that gave victory to democracy and human rights and opened promising horizons for hope, reflection and strong faith in the future of man.

2. The development of the advisory Council on human Rights The qualitative review of the prerogatives and the composition of the Advisory Council on Human Rights represented a significant stage in the process of settling the grave violations of the past, by providing an excellent framework and a suitable political and human rights space, since it is a human rights "parliament", involving most political, intellectual and associational schools of thought relating to human rights. This was a suitable arena for the settlement issue to interact with ideas and opinions and to discuss possible consensual ways for sorting out the issue. The reasons making it necessary to refound and restructure the Advisory Council on Human Rights, and to broaden its prerogatives, can be summarized as follows :

Reference 12 - 0.25% Coverage

- To complete the construction of a modern state based on the rule of law, in the context of a constitutional, democratic and social monarchy, based on adherence to human rights as recognized internationally and the democratic gains that have been made in culture and practice ;
- To maintain the rights and freedoms of citizens, groups and organizations, and to ensure that their practice is constitutionally secure. They are also an embodiment of civilizational and cultural principles, tolerant Islamic values, and international human rights obligations ;
- To promote human rights, maintain freedoms, establish a state based on the rule of law, and reinforce the dignity of the citizen within a comprehensive understanding of human rights, seeing that they are a powerful stimulus for development in which all the political, civil, economic, social and cultural dimensions complement each other ;
- To establish the new concept of authority through institutions meant to serve the citizen and protect him from any excess or abuse of power by the administration, groups or individuals ;

Reference 13 - 0.60% Coverage

- To give civil society the status it deserves in the Council, in view of the dynamism it has shown ;
- To be careful when choosing the members of the Council that they be known for their objectivity, their moral integrity, their intellectual ability, their genuine attachment to human rights and their distinguished contribution to strengthening them ;
- To make the composition of the Council more pluralistic in terms of its representation of political and civil society ;
- To enable the Council to exercise its prerogatives in such a way as not to prejudice the exercise by the legislative, judicial and executive apparatuses of their prerogatives, in accordance with the independence and separation of powers required in a state based on the rule of law.

Within this framework fall all the considerations and requirements for developing the Advisory Council so that Morocco may remain dynamically involved in modernity and faithful to its international obligations in the realm of human rights, qualified to meet the challenges of the 21st century in harmony with its history and culture, based on the divine honour given to man, and on the virtues of freedom, equality, peace, brotherhood, tolerance, moderation and the prohibition of injustice.

2.2. The Prerogatives of the Advisory Council on Human Rights

The functions of the Council have begun to be described as prerogatives. Contrary to the Dahir that established it on 20/04/1990, it was defined as a specialized institution whose "mission is to assist His Majesty the King" in all matters relating to defending and protecting human rights, ensuring that they are practised and promoted, and maintaining the dignity, rights and freedoms of citizens, groups and institutions". In the context of its advisory role, it also falls to it to bring, present, or explain opinions, positions and recommendations concerning issues relating to human rights. The mission of the Advisory Council on Human Rights centres around thirteen prerogatives touching the areas of protection and promotion, harmonization of laws, the implementation of international obligations, and national and international cooperation, including :

- The prerogatives of the Council to express an opinion when His Majesty the King consults it concerning general or special matters relating to the protection and respect of human rights and the freedoms of citizens, groups and organizations ;
- Submitting reports and proposals, especially concerning matters relating to the protection, promotion and better development of human rights ;

Reference 14 - 0.52% Coverage

- Expressing an opinion on the annual report presented to the Council by the member responsible for the apparatus entrusted with promoting communication with citizens, institutions and the administration ;
- Studying to what extent domestic legislative and regulatory texts are in conformity with the international

conventions relating to human rights that the Kingdom has ratified or acceded to, and which have been published, and making appropriate recommendations ; • Encouraging continued ratification of or accession to international conventions and treaties on human rights, and studying draft international conventions and treaties and legislative and regulatory texts relating to human rights that are referred to it ; • Contesting cases of violations of human rights, either automatically or at the request of those involved, by studying them and making recommendations concerning them to the competent body ; • National, regional and international cooperation. The Council is responsible for managing cooperation between the public authorities and representatives of national and international associations and persons competent in the field of human rights, as well as cooperation with the United Nations and the bodies appertaining to it, and the international and regional bodies specialized in the protection of human rights. Moreover, whenever required, the Council shall help to prepare the reports that the public authorities have to submit to UN bodies and the competent international and regional institutions, in accordance with the Kingdom's international obligations, as well as offering assistance, when required, to delegations participating in international meetings on human rights ; • Spreading the culture of human rights, and enshrining its ideals. The Council shall help in spreading and entrenching them by all appropriate means. It shall also encourage and support all humanitarian work aimed at defending, respecting and promoting human rights, and helping to enshrine their lofty ideals ; • Protecting Moroccan immigrants. The Council shall actively help to cooperate with similar institutions in protecting the freedoms and defending the rights of Moroccans residing abroad.

Reference 15 - 0.17% Coverage

making final decisions concerning petitions of nullification on the grounds of abuse or misuse of authority. The birth of the administrative courts constituted a turning point in giving the citizen more scope for seeking redress against the administration. This event was and still is of great importance because of its implications for the construction of a state governed by the rule of law. From the first year that the courts began to operate, the courts began to accumulate new jurisprudential innovations ensuring the implementation of legal principles guaranteeing the protection of human rights. The jurisprudential work also confirmed that administrative justice played a key role in the protection of human rights.

Reference 16 - 0.34% Coverage

human rights and the universalization of the principles of the practice of democracy, the charters and constitutions recognize this right ; • The right to strike is guaranteed. Whereas in its generality this provision expresses a deep political and social necessity, embracing the public service sector and the private employment sector, and insofar as this constitutional provision is absolute and general, public servants cannot be excluded from enjoying it. The right to strike is not absolute, but is subject, like other rights, to restrictions that ensure that it is exercised in a safe manner, and that the orderly running of the facility is maintained while ensuring the freedom to express occupational demands.

4. The establishment of the diwan al-madalim On the eve of the 53rd anniversary of the Universal Declaration of Human Rights on 9/10/2001, the Dahir was issued regulating the institution of the Diwan al-Madalim (ombudsman), which replaced Dahir No.279-56-1 dated 10/11/1956 and Dahir No.325-56-1 dated 16/4/1957, relating to the establishment and the regulation of the Office of Research and Information. In terms of its nature, the Diwan al-Madalim is an institution "entrusted with developing communication between citizens, individuals and groups, and between government departments or anybody exercising the prerogatives of the public authority, and encouraging them to commit themselves to the controls of the rule of law and equity".

Reference 17 - 0.03% Coverage

By supporting the role played by the Advisory Council on Human Rights in the framework of the prerogatives invested in it.

Reference 18 - 0.11% Coverage

To this end, the Diwan al-Madalim shall undertake the following : • Submit proposals and recommendations intended to enforce rights to the departments involved ; • Help to improve the running of the administrative apparatus in the service of the citizenry, within the framework of the rule of law and equity. This shall be done by submitting an annual report to His Majesty, and submitting reports to the Prime Minister and Advisory Council on Human Rights.

Reference 19 - 0.23% Coverage

parliament, cases falling within the jurisdiction of the Advisory Council on Human Rights, or those where the aggrieved person has not undertaken any official endeavour or “petition for pardon”, and has not exhausted all the appeal procedures available under the legal system in force to right wrongs, to claim reparation for injuries and to restore a person’s violated rights. In cases where it does not have jurisdiction, the Wali al-Madalim (complaints ombudsman) or his deputies may, at the request of the parties involved, seek for solutions meant to find a swift and equitable settlement to the dispute. If it transpires that the body involved has been dilatory in implementing a final judicial ruling resulting from deeds committed by a public servant or a public agent belonging to the body against whom the ruling has been issued or resulting from his failure to carry out a duty, the Wali al-Madalim shall submit a report on the subject to the Prime Minister.

Reference 20 - 0.23% Coverage

The activities of the Wali al-Madalim derive additional importance from the reports and recommendations he submits, in so far as : • He shall submit to His Majesty annual reports dealing with his work, which shall be published in whole or in part by royal order ; • He shall submit to the Prime Minister general recommendations concerning measures intended to enforce the right as regards the grievances submitted to it ; • He shall submit proposals concerning measures intended to improve the efficiency of departments concerning which complaints are made, to correct irregularities and deficiencies that affect the running of facilities attached to them, and to reform the laws regulating them. When necessary, he shall inform the Prime Minister when the departments involved refrain from responding to his recommendations ; • He shall submit to the Advisory Council on Human Rights a report concerning matters relating to the promotion of human rights in the framework of its prerogatives.

Reference 21 - 0.22% Coverage

ii. basic legal Reforms relating to the protection of human Rights

1. new Criminal procedure legislation The Code of Penal Procedure created by virtue of the Dahir of 10 February 1959 was the first code established by the state in this field at the beginning of independence. When it was introduced, it was characterized by openness and the fact that it contained a group of rights and guarantees of great importance. The original text of the Code of Penal Procedure was full of indications of its liberal legal culture, providing strong guarantees of a fair trial, and referring to the spirit

of the Universal Declaration of Human Rights issued on 10 December 1948. There is no doubt that political factors and others emanating from the nationalist climate of the time helped those who drafted it, by virtue of the intellectual principles of the Code of Public Liberties prevailing at the time, and the existence of political powers deriving from

Reference 22 - 0.29% Coverage

the body of the nationalist movement in the institutions and bodies of the state (the Advisory Council and the government). The Code of Penal Procedure is not an ordinary code regulating purely technical matters. Rather, it is a code that highlights supremely the degree of civilizational development prevailing in a certain society, in terms of the regulation of the boundaries between the private and the public domains, and the sphere of state authority and what is left up to the individual. It is a code by which to measure the level of development achieved in the field of human rights, and a state based on institutions and the rule of law. Amendments were introduced to it about the founding philosophy and the guarantees defining the boundaries of freedom. The amendments were not introduced in isolation from the political context of the country. They were introduced during two significant historical periods, namely the early 1960s, marked by major political struggles for power, and those (the so-called transitional amendments) that were introduced in 1974 following the two abortive coup attempts and the events of March 1973. The main tendencies that characterized the amendments and dominated them in terms of scope and procedure were :

Reference 23 - 0.28% Coverage

It thus condemned the philosophy of the Code of Penal Procedure deriving from the foundation stage to become a part of the memory of independent Morocco, and the fundamental changes issued in 1962 and 1974 gave rise in practice to a new law. The law did not experience any positive change until the beginning of 1991 at the initiative of the Advisory Council on Human Rights. It is worth mentioning that the amendments introduced at the initiative of the Advisory Council on Human Rights included in particular a change in the period of police custody in matters involving the internal or external safety of the state, fixing it at 96 hours renewable once with the written permission of the public prosecutor. They also obliged the judicial police to inform the family of the detainee as soon as a decision was taken to place him in custody. In addition, a daily list of names of those placed in custody during the last 24 hours should be sent to the public prosecutor. It also enunciated the right of the suspect to seek the help of a lawyer when presented to the crown prosecutor, and the right of the latter to attend the interrogation. It also stated that the crown prosecutor was obliged, if requested to do so

Reference 24 - 0.31% Coverage

or on the basis of his personal examination, to submit the suspect to an examination to be carried out by a specialist doctor. These amendments were not sufficient to bring about a fundamental change in the Code of Penal Procedure, and it required an additional period of no less than ten years for the first more or less comprehensive review of this code to be undertaken. After a long gestation, the government referred a new draft law to parliament, accompanied by in-depth discussions by the Justice, Legislation and Human Rights Committee in the House of Representatives. Under the supervision of the Speaker, and for the first time in the history of the House of Representatives, this Committee organized a study day attended by personalities from the judiciary, the universities and human rights circles, which helped immensely to improve the draft legislation. It was also submitted to the parallel committee in the Chamber of Councillors, which in its turn approved it, and a few months after it was ratified by parliament,

some amendments were attached to it relating to the war on terror². The preamble of the Code of Penal Procedure highlights the philosophical bases and the normative principles governing the choices on the basis of which this code was drawn up. They focused in particular on :

Reference 25 - 0.13% Coverage

The Code of Penal Procedure laid down a number of safeguards relating to the strengthening of the principles of human rights during the pre-trial stages, including in particular : • The judicial police officer has to seek the assistance of an interpreter if the person being questioned speaks a language or a dialect that the judicial police officer does not speak well ; • This safeguard also applies when the accused appears before the public prosecutor as well as when he appears before the examining magistrate or the sentencing magistrate ;

Reference 26 - 0.21% Coverage

for a fair trial and to strengthen the principles of human rights and protect the rights of individuals, whether suspects, victims or witnesses. Among these innovations were : • The establishment of a procedure for reconciliation in cases specified in law ; • Surrounding the procedure for tapping phone lines and intercepting, recording and seizing communications carried out by means of distance communication with strong safeguards and placing it under judicial control when it was being practised by the examining magistrate, whenever necessity required. Its scope was limited to specific crimes of a particularly serious nature ; • Adding placement under judicial supervision as an alternative to preventive detention, which gives the examining magistrate important and effective alternatives ; • Allowing the rulings of the Chambers of Felonies to be appealed, thus providing more safeguards for a fair trial ;

Reference 27 - 0.23% Coverage

For many decades, the provisions regulating penitentiary institutions continued to be derived from the Dahir issued in 1915, 1930 and 1942. These provisions, as well as the conditions inside prisons, continued to be in breach of the minimum ideal conditions for the treatment of prisoners recognized internationally, and were the subject of wide ranging legal and human rights criticism. In the context of the changes seen in the 1990s, the matter would be reconsidered, starting with the important legal studies and the in situ visits carried out by the Advisory Council on Human Rights. This opened the door officially for the first time in 1997 for human rights organizations to visit prisons. Thus the state launched a new policy intended to renovate and reform the institutions and construct new ones. It also opened the door for legal review which was characterized by the effective participation of human rights activists in the preparatory proceedings for drawing up a new law.

Reference 28 - 0.25% Coverage

- The decision concerning the measure taken by the disciplinary committee shall contain the reasons for the decision and the detainee shall have the right to contest it within five days of being informed of it ;
- The director of the Prisons Department must make a final decision on the request to contest within one month of his receipt of it, and must justify his decision ;
- It is not permitted to use means of restraint like manacles, bonds or a straitjacket ;
- The right of detainees to receive family members or those responsible for them should be humanized, and visits should be conducted in a visiting hall without a barrier ;
- It establishes the principle that, with the permission of the director of the Prisons Department, members of human rights organizations and associations or members of religious organizations may visit prisoners

and check on their welfare ; • It forbids photographs, video clips, pictures, drawings or audio recordings within, or in the immediate vicinity of penitentiary institutions except with the permission of the minister of justice ;

Reference 29 - 0.16% Coverage

The law regulating the situation inside penitentiary institutions raised a number of problems when it came into force. This was highlighted especially when organizations and associations were given the right to conduct on-site visits. When it prepared the special report on the situation in prisons issued in 2004, the Advisory Council on Human Rights was able to formulate a group of observations and proposals focusing on amending the legislation and implementing the legal provisions relating to the Prison Code, the Code of Penal Procedure and rules for pardon. The Advisory Council's proposals vary between issues requiring amendment and others requiring implementation.

Reference 30 - 0.21% Coverage

The Press Code is linked with other special codes to the structure of public liberties, namely associations and public gatherings. The Press Code is one of the codes that is most liable to retrograde tendencies. Since 1958, it has suffered a number of amendments, the most notable of which took place in 1973. This law aimed in particular to strengthen restrictions by increasing penalties and fines and to enable the executive branch to suspend and ban newspapers without submitting the matter to the judiciary. It was subject to wide-ranging legal and human rights criticisms before the subject of reviewing it was opened in the context of the ministerial committee on liberties. It then passed through the ministerial and governmental councils before being referred to parliament in the autumn 2001 session. The reforms that were intended by the Press Code embraced four main fields :

Reference 31 - 0.04% Coverage

3.1.4. Strengthening the Rights of Third Parties insofar as they are Human Rights It also included reforms that incorporated provisions relating to :

Reference 32 - 0.26% Coverage

The issue of public assembly has been strengthened by legal provisions and by a legal human rights interpretation by the prime minister. Prime Minister's bulletin No.28.99 issued on 5 November 1999 contains a regulatory reform that strengthens the right of freedom of public assembly. This relates to the use of public halls by associations, political parties and trade unions to express their opinions and interests. This is on the basis that all this falls within the freedom of assembly, and the freedom of opinion and expression, which requires a positive attitude to requests to use halls and buildings in a framework of total respect for the principles of legality and equality. Secondly, the provisions relating to dispersal of crowds have been strengthened by obliging the representative of public force to read out loud the penalties enunciated in Article 19 of the law when giving a crowd an order to disperse. It also obliges the representative to give a second and third warning and to conclude the final warning with a public authorization to resort to the use of force to disperse the crowd.

Reference 33 - 0.33% Coverage

To this extent the reform of the Family Code represented an advance in the activation of the universal values of human rights, particularly women's rights, and a qualitative jump in the implementation of the Convention on the Elimination of all Forms of Discrimination against Women, the Convention on the Rights of the Child and other international covenants. It also enables a renewed activation of the mechanisms of innovation, proving that it is possible to base reform on the Shari'a and to promote women's rights and assert their equality from within Islam. It also consecrates the arena of social reform and gives a powerful boost to the process of constructing democracy, strengthening the human rights and modernizing society. Thus the demand for the liberation of women, which has enticed generations of men and women, intellectuals and victims of violations, has been able to cut a way through state and society in a model application of the possibility of making positive break-ups within the continuity of the political and constitutional system. In the framework of consolidating this qualitative reform of the Family Code comes the royal decree ruling that a child of a Moroccan mother and a foreign father should have the right to obtain Moroccan nationality. To this end, it has been deemed necessary to undertake an in-depth review of the Nationality Law of 1958 in order :

Reference 34 - 0.13% Coverage

Morocco ratified the Convention against Torture⁴, while at the same time registering its reservations concerning Articles 28 and 30. However, human rights and legal communities continued to demand that the Penal Code be brought into compliance with what Morocco had ratified. Finally, in the light of the recommendation concerning torture submitted by the Advisory Council on Human Rights on the occasion of its 2003 report on the status of human rights, the government officially announced that it was reviewing its reservations and submitting a draft law on the subject.

Reference 35 - 0.05% Coverage

In a memorandum signed by the minister of justice and the minister of the interior, and sent to the Advisory Council on Human Rights on 16/7/2004, the Moroccan government announced the following:

Reference 36 - 0.10% Coverage

Having brought to the knowledge of the Advisory Council on Human Rights a group of clarifications and decisions, the government confirmed once more its desire to shed light on all claims relating to torture. The presentation delivered by the minister of justice to the Advisory Council on Human Rights contained a draft law relating to the amendment and complementation of the Penal Code as it relates to torture.

Reference 37 - 0.24% Coverage

- The Kingdom of Morocco commits itself to the principles of human rights as internationally recognized and enshrined by virtue of the 1996 constitution ;
- It takes into account the Universal Declaration of Human Rights, which states in Article 5: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" ;
- Its conviction that torture strikes at the most deeply rooted values of any society that is committed to respect the rule of law, human rights and basic liberties ;
- Its consideration of the relevant provisions, including in particular the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment which has been ratified by our country and which states in Article 2: "Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction" ; and again in Article 4: "Each State Party shall ensure that all acts of torture are offences under its criminal law" ;

Reference 38 - 0.37% Coverage

6.1. General Provisions • One should be aware of the gravity of the crime and be prepared to confront it resolutely, to protect people from it and to put a stop to its causes ; • A penal policy should be adopted appropriate to the Moroccan situation, open to comparable experiences, and in conformity with international conventions ; • Respect for human rights as internationally recognized should be made the framework for any legislative review ; • One should be concerned about the human beings entrusted with law enforcement insofar as they are the basic instrument for implementing the will of the legislator ; • Appropriate resources should be provided for the various mechanisms of criminal justice like the judiciary, the judicial police, defence lawyers, experts and other judicial agents, as well as to respect international standards relating to these classes of actors ; • The adoption of appropriate practical measures should be speeded up to activate the existing texts by means of the human and material sources available that have not yet been exploited or benefited from ; • More consultations should be conducted in the form of workshops to deepen the discussion on real data and legislative solutions appropriate to the national situation and international trends, and to form a committee of the personalities involved to formulate a draft legal text based on the recommendations produced out of the proceedings of the workshops ; • Efforts should be continued to protect disadvantaged groups, especially granting justice and assistance to victims ;

Reference 39 - 0.20% Coverage

6.2. Conformity of Legislation with International Conventions • The superiority of international conventions over domestic law should be adopted by virtue of a constitutional text confirming the judicial innovation ; • The study of international conventions on human rights and the prevention of crime should be completed with the aim of ratifying them ; • The provisions of international conventions should be inserted into domestic law, especially in the fields of torture, terrorism, the death penalty, imprisonment for non-payment of debts, the grave violations enunciated in international humanitarian law, and the crimes enunciated in the statute of the International Criminal Court ; • The Code of Military Justice should be reviewed with the purpose of applying the Code of Penal Procedure and restricting the jurisdiction of the court to military misdemeanours.

Reference 40 - 0.52% Coverage

As it drew up ideas and proposals relating to means of achieving a just and equitable settlement to the grave human rights violations of the past, the Commission also bore in mind all the contents of memoranda sent by a group of national human rights associations, representatives of victims, the Moroccan Bar Association and other national bodies and international organizations involved in human rights issues. During its term, it received memoranda and proposals from human rights associations and political bodies relating to various or specific subjects falling within the scope of its mission. It also organized individual and public meetings inside and outside its headquarters with many associations and representatives of the victims, and held meetings with political and trade union bodies, either at the request of the latter or on the initiative of the Commission. This approach enabled all those bodies to keep abreast of the work of the Commission. In order to involve public opinion in a wide-ranging debate about necessary reforms, in connection with the mission of the Commission, the latter organized dialogues about the components of reform and reconciliation.

i. human Rights associations and organizations The human rights movement constituted a strong moral tributary and an important bargaining chip along Morocco's process towards a just settlement of the

gross human rights violations of the past, and strengthening the reforms so as to help to ensure non-repetition. It is possible to read the principles and approaches that governed and characterized the work of the human rights associations with regard to the settlement of the violations of the past in terms of three main stages : • The first stage stretching from the beginning of the 1990s when the forcibly disappeared were released until 2 April 1998, the date when the Advisory Council on Human Rights issued its famous recommendation ; • The second stage, which began immediately after the Council's recommendation and stretched until the National Symposium on the Gross Human Rights Violations of the Past was held from 9-11 November 2001, and the beginning of the work of the Follow-Up Commission that sprang from it ;

Reference 41 - 0.35% Coverage

• The third stage began when the Advisory Council on Human Rights submitted its recommendation to His Majesty King Mohammed VI concerning the creation of the Equity and Reconciliation Commission. In all the previous stages the individual and shared positions of the human rights associations and organizations differed in terms of their intellectual approaches to issues, their principles and the way they reacted to political developments and the problem of reform. The establishment of the Commission represented another occasion for civil society activists to express their conceptions and their suggestions concerning the process of settling the various aspects of the gross violations of the past. Thus, in addition to the human rights organizations concerned, both nationally and internationally, who played a fundamental role in this process, the Commission received memoranda and suggestions from other associations and committees directly or indirectly concerned about the subject, especially local development organizations in the regions that suffered from the violations of the past, a broad swathe of whose inhabitants had begun to feel that the causes of the marginalization that they were experiencing went back to those violations. Therefore, they were drawn in to help think about mechanisms for community reparation for injuries. The spheres in which the civil society activists contributed by submitting memoranda and suggestions tending to consolidate the reforms can be summarized as follows :

Reference 42 - 0.10% Coverage

• The constitutional entrenchment of human rights ; • Enshrining the role of the judiciary in solving political and social disputes and allowing the law to be the arbitrator in solving these disputes ; • Providing the conditions for eliminating impunity ; • Providing community reparations for injuries for the regions involved, through economic and social development programmes especially for them ; • Enshrining cultural pluralism.

Reference 43 - 0.29% Coverage

The goals set out by the Commission for these meetings can be summarized as follows : • To understand the positions of political and social actors concerning the issue and their approach to analyzing the context of the gross human rights violations, and their suggestions regarding safeguards for the future ; • Completing the data concerning the historical events linked to the violations of the past identified by the Commission, through the studies conducted by the study group and the contents of communications received from the victims of those violations ; • Trying to record a joint memory by using a standard of equality when dealing with the numerous readings of these events by political parties and trade union organizations ; • Making sure the final report reflects a part of the political actors' reading of events ; • Opening a dialogue with political actors about their conceptions and suggestions concerning the

components necessary for national reconciliation ; • Drawing the political actor closer to the concerns and work of the Commission, insofar as he is one of the concerned parties having a central role in implementing the recommendations of the Commission, especially through his performance in the legislative institution.

Reference 44 - 0.11% Coverage

From 15 February to 23 March 2005, the Equity and Reconciliation Commission organized a series of dialogue sessions with the following goals : • To involve public opinion in a frank and responsible reflection on the political, intellectual and historical contexts of the human rights violations that Morocco experienced since the early years of independence, the causes that led to their being committed and the repercussions they had on the political development of Morocco ;

Reference 45 - 0.18% Coverage

The Commission was keen to involve in these sessions personalities with academic and practical experience and those concerned or active in political and civil society. These sessions were organized in the form of discussion panels that were broadcast over the audio-visual media and the Commission's web page. Each panel was chaired by a member of the Commission and animated by a person of its choice. The panels focused on analyzing the political contexts of the violations and discussing practical means of avoiding the use of punishments that were contrary to human rights. Institutional and legal reforms were also proposed intended to entrench the rule of law and the protection of freedoms. The proceedings of the panels focused on the following subjects :

Reference 46 - 0.31% Coverage

The subject of the first discussion panel, which was organized on 15 February 2005, was the issue of democratic transition in the light of the major political events linked to the violations experienced by Morocco since independence, the components of the political regime, and international experiences of transitional justice. It was attended by about two hundred persons representing political parties, trade unions, associations for the defence of human rights, and organizations from civil society and the media. This session focused on approaching the problem of democratic transition on the basis of a reading of the public hearings that the Equity and Reconciliation Commission had begun to organize on 21 December 2004 in terms of their benefit and significance. How much educational impact have they had on public opinion? How have they affected national political culture? How should we analyze the gross violations of human rights in Morocco in the context of political history in comparison with other international experiences? The debate concentrated on the development that Morocco is currently experiencing in dealing with the gross human rights violations of the past, starting from the approach of the Equity and Reconciliation Commission and from the roles that civil and political society

Reference 47 - 0.49% Coverage

- Considering the public hearings of victims of human rights violations as part of a vast work that the Commission is undertaking, in that parts of it deal with enquiries and investigations into the violations ; • The hearings constituted an important historical moment in broadening the scope of freedoms, as well as having a fundamental pedagogical dimension in that they were an opportunity for victims to express and publicize their suffering and reclaim their dignity ; • The public hearings represented one of the main features of the political landscape, and a fruit of the process of the political advances that had been

accumulated during previous years. It was without doubt a courageous event, and out of the ordinary for the political history of Morocco, as the country opened up its wounds and made the pages of its history available for review and self-criticism. It was also an opportunity for Morocco to arraign a specific historical period with courage and objectivity ; • The public hearings also represented a historical event with deep implications, because it came as a result of a political movement springing from the political parties and civil society, and encountering the political will. In this connection, the hearings stood out as an opportunity for victims to tell their stories, to talk about their pain, to disclose what they had gone through and to denounce the excesses. Thus they constituted a watershed between two stages and a test to see whether we can present an appropriate understanding of what happened and what is happening in Morocco. It also provided the opportunity to be heard as an important virtue that our country had previously been lacking. If these sessions had any significance, it was to appreciate the deep meaning of its sufferings, which had not been previously possible ; • The important thing about the testimonies is the future result they might have of removing fear and re-establishing the relationship between citizens and the state, and also making citizens feel that politics must become a concern of theirs.

Reference 48 - 0.62% Coverage

During the discussion of the subject of the democratic transition and the experience of transitional justice in our country, the discussion crystallized a number of thoughts and conclusions, which may be summarized as follows: • It emphasized that this process did not come, as happened in other countries, as a result of a change in the political system, but arose in the context of the historical continuation of the same political system. This is what constitutes the uniqueness of the Moroccan experience. In this connection, some wondered if the current experience fell in the context of containing an issue that raises its head continuously or in the context of a strong desire by the political system to bring about change ; • What Morocco is currently going through must be handled in the context of the comprehensive process of democratic transition and consideration of the extent of society's involvement in this dynamic. Is there a type of political charter with clauses or conditions for the establishment of the next stage, which is the entrenchment of democracy, one of whose main goals is to safeguard the future and make politics a legitimate practice and a national duty ; • The experience of Morocco in the field of transitional justice stimulates the desire to offer readings of the problem of transitional justice in the light of the standards and values of human rights and democratic principles through throwing light on the contexts of past violations of human rights experienced by Morocco since independence, trying to analyze the components of the political system, and examining its strengths and weaknesses. Thus the importance of analyzing the stage in terms of its place in the political transition being experienced by Morocco, emphasizing the necessity for quiet collective thought to interrogate the previous stage on the theoretical level, and attempting to look to the future ; • Around the world there are about 40 experiences of reconciliation and transitional justice. They all use different types of models of transition, containing different types of queries according to the nature of the transition. Their common denominator is their endeavour to present key reforms in favour of the future ; • The Moroccan experience was characterized by a sort of modernization in dealing with the subject, which was contributed to by the national and international situation, and was accompanied by political, social and economic changes, devoid of any external influence to direct it. In this connection, people were reminded of the major changes seen by Morocco in different processes, which were strengthened

Reference 49 - 0.54% Coverage

While the participants in this session stressed the responsibility of the state for the use of violence in managing political affairs, they also highlighted the way political and social components resorted to

violence during various stages of the historical period falling within the temporal competence of the Commission, from the beginning of the independence period until 1999. In this context, they examined the causes linked to the general context of the beginning of the construction of the post-independence state, those linked to the legal and institutional aspects, and the lapses experienced at specific times, and other related reasons of an economic and social nature. The most important thoughts and ideas expressed on this topic were as follows : • While every state is responsible for protecting the security and freedoms of its citizens, the exercise of legitimate violence, when necessary, must be in conformity with the legal texts, which must in turn be in conformity with recognized international standards. In this connection, people were reminded that the first independence law codes (especially the 1958 Code of Public Freedoms) were of a distinctly liberal character. However, in succeeding years, they were subject to amendments that emptied them of their content ; • The use of violence in the Moroccan political arena began from the dawn of independence. This period witnessed a number of violent incidents including arbitrary detentions, kidnappings and other grave violations of human rights even going so far as assassinations and forced disappearance. In this connection, it was pointed out that numerous political groupings resorted to violence during this period, considering that the independence that Morocco had achieved was not total and that the time to lay down arms had not yet come, while others considered that independence was incomplete. In addition, there were fierce disputes and struggles, sometimes taking on a tribal nature that went on and on within Moroccan society. However, it must be made clear that the basic problem does not lie in the struggle, which is natural in all societies, but in the lack of mechanisms to manage differences peacefully. In this period, many groupings considered that violence was a useful means of managing disputes ;

Reference 50 - 0.37% Coverage

During this session, participants addressed some general trends that the country was experiencing towards moving beyond violence as a strategy of political management, considering that the work of the Commission was a real opportunity to promote these trends and enable them to take their true place in solving disputes, whatever their nature or source. In this context, participants concentrated on the following elements : • Morocco is today experiencing what could be called a period of historical consciousness, because the state has acknowledged in practical terms the violations of the past and the violence practised during that period ; • Starting from this critical initiative by the state, it must be acknowledged that this period was riddled with violent struggles, and recorded that the actors agree to conduct an evaluation of the previous period. Thus, we are today faced with the challenge of conducting an objective appraisal of this period ; • Taking into consideration that the intellectual elite did not participate in the conspiracy of silence or fail to uncover the facts. Discussion of the violations of the past was to be found in the literature of many organizations, in the writings of the victims and in opposition newspapers ; • The political and social dynamism we are experiencing today, through the hearings of the victims of human rights violations and other initiatives, represent a collective acknowledgement by the state and the political components of society of an agreed determination to make a break with this past and to look towards the future ;

Reference 51 - 0.35% Coverage

The main thoughts and opinions falling within this topic can be summarized as follows: • It was stressed that one of the components of national reconciliation is the peaceful management of the right to differ and to protest. This gives rise to the necessity of undertaking a number of institutional and legal reforms and beginning a quiet and constructive national discussion on various issues of reform ; • It is strategically important to develop the capacity of Moroccan society to provide education about human rights and

democratic practice. In this context, praise was heaped on the draft plan regarding education on human rights in educational institutions, which both the Advisory Council on Human Rights and the Ministry of National Education helped to prepare ; • Amendments must be made to the legal texts relating to public freedoms to bring them into conformity with national and international developments and to regulate practices for the private management of the public sphere ; • The Commission is working with university academics and experts to build up documentary and digital resources and to conduct documentary and academic studies about the violations of the past and their contexts and to help formulate projects and practical programmes that enshrine the rule of law, entrench the rule-of-law state, protect freedoms and help to prevent the repetition of violations. However, it is faced with the difficult problem of writing the modern history of Morocco, which

Reference 52 - 0.19% Coverage

3. economic and social Reforms This session was held on 1 March 2005, and dealt with the analysis of the various human rights violations of the past, on the economic and social levels, and the relationship between economic and social reforms and entrenching respect for the law and the guarantee of individual freedoms. The proceedings of the session focused on two basic questions. Firstly, what are the links between the gross human rights violations committed in the past and economic and social issues? Secondly, how can economic and social reforms help to ensure non-repetition? Participants tried to present some answers while promoting a comprehensive approach to combating gross human rights violations on the one hand, and consolidating the process of reconciliation in its various aspects and dimensions on the other.

Reference 53 - 0.61% Coverage

The participants in the proceedings of this session tried to approach the relationship between the gross violations of human rights committed in the past and some economic and social issues on the basis of the following main considerations : • It considered the gross violations of human rights as a denial of the individual's and the group's right to participate in managing their affairs, including their economic affairs. In this connection, reference was made to the fact that groups, families, political parties and whole regions being exposed to grave injuries as a result of those violations, and that whole regions suffered severely from violations which could be considered as a type of community punishment ; • The Commission examined regions that had been injured as a result of the violations and being deprived of benefit from economic projects, which currently need reparation programmes for the injuries that they were subject to. These regions included for example: the Rif, Imilchil, Agdez, Khenifra, Beni Mellal and Azilal. Their suffering was double, as they endured the violations on the one hand and on the other they were marginalized and did not benefit from development programmes ; • The phenomenon of gross human rights violations has been witnessed by most societies of the world, because the political struggle is played out because of struggle for public wealth and resources ; • Morocco did not escape this phenomenon because of the growth of the black economy and the distribution of exploitation licenses and concessions by means of positioning oneself within the current model of authority with the aim of illicit self-enrichment in the absence of monitoring mechanisms regulated by the practice of democracy and by placing those responsible beyond accountability ; • Political violence in its relationship with the economy is a phenomenon that all countries experience. However, the difference is that this phenomenon led in Morocco to the development of models of the parasitic and black economy ; • Some participants noticed failure in the management of public affairs by economic institutions that were not subject to modern management or to a system of monitoring and accountability. Moreover, they also noticed that those institutions slipped out of their responsibilities, pointing out that the actual decisions were usually taken

outside the economic institution, which was usually exploited for specific goals to promote and broaden the principle of supporting a particular political model. This does not mean that these institutions did not produce anything, but in the absence of

Reference 54 - 0.60% Coverage

monitoring mechanisms, these institutions strayed from their mission and became a tool to achieve other goals ; • The lack of democracy led to the emergence of an economy that was not subject to modern standards. Moreover, the fact that these violations stretched over a long period of time damaged the whole fabric of society and society's values and practices were effected ; • There were a number of deficiencies, the most conspicuous of which were violations of workers' rights in the economic sector, in addition to a sort of ambiguity in the behaviour of businessmen, in that there was a group of them who wanted the law to prevail in order to build a sound economy while others preferred underhand methods. Thus it was stressed that it was important for the state to intervene to introduce controls defining the relationship of economic players, whether with the authorities or with society ; • Some explained that the economic violations came as a result of the lack of democracy during that period and the dominance of security concerns over the economy, the weakness of the judiciary, the absence of monitoring and the collusion of those close to the decision-making centres, which led to deals, and a number of fertile lands being sold, without serious studies, and the granting of loans without security ; • During the period of the gross violations of human rights, management of public affairs was characterized by a number of major defects that resulted in a black economy lacking a spirit of honest economic initiative, and many young contractors were excluded because of the dominance of a corrupt economic elite who lacked impartiality and a spirit of responsibility and monopolized the economic sphere ; • The purification campaign which Morocco experienced in 1995, which affected a number of contractors, had political goals and intended to discipline contractors who criticized the government, established relationships with foreign firms of contractors, and did not follow some instructions. This is in addition to the disastrous effect this campaign had on the national economic level, in that it fell indiscriminately on good and bad contractors ; • Today we are still experiencing the repercussions of the period of gross violations. This is revealed in contractors' lack of experience in exposing themselves to the risks of competition, the prevalence of tax evasion and the continuation of opaque relationships with the authorities, which are all elements that have contributed to creating a fragile and fragmented economic fabric ;

Reference 55 - 0.46% Coverage

- Participants were invited to draw lessons that would protect us from repeating the human rights violations and practices that led to the defects experienced by Morocco on the economic and social levels. In this context, it was pointed out that there was a relationship between two events that occurred during the period stretching between 1990 and 1995, which were of great significance. These were the simultaneous acknowledgement of the existence of human rights violations, and the release of a number of detainees on the one hand, and on the other hand the comment by the late King Hassan II on the World Bank report that pointed out that Morocco may suffer a sort of heart attack if it does not undertake reforms ; • The above-mentioned World Bank report was the beginning of consultations and communications with the opposition parties to invite them to participate in the government and save the nation ;
- Although the state was subjecting long-term economic goals to security concerns, and officials themselves were one of the reasons for the economic failures experienced by Morocco during the years of gross violations of human rights, at the same time it constructed a number of institutions during this

stage, which enabled the construction of a modern economy and the emergence of a public and a private sector and major economic institutions ;

- Involving all actors in developing a culture of respect for the other and belief in pluralism and difference, developing mechanisms of good governance and providing mechanisms for managing differences by peaceful means are all things that have a positive influence on the economy, along with restoring trust and respect for the law, springing from a human rights approach that allows everybody to participate in public life ;
- Economic and societal growth cannot be achieved "without entrenching the bases of democracy, respect for human rights, rationalization of government work, and

Reference 56 - 0.60% Coverage

pushing through the series of reforms that up until now are not sufficient and do not meet the requirements of contractors, in spite of the increasing pace of recent years. It is also necessary to build up trust between all actors, and to encourage domestic and foreign investment, in order to create wealth and jobs. Moreover, it is impossible to train contractors in the context of a black economy, since the predominant concern of contractors is currently to deal with the elements of society in order to promote contracting and to increase its competitiveness ;

- Morocco has taken the choice to modernize its economic life to the extent that today we are living through an economic process that is developing and requires new models of management ;
- Any economic fabric can only be productive if the elements of competitiveness, respect for the law, prevalence of trust, and achieving complementarity of activities by concentrating on all the elements that constitute Morocco's economic unity, especially by giving attention to the rural areas, which have suffered from excessive marginalization, leading to the deterioration of economic structures in all regions of the country ;
- Today we are required to make appropriate changes in the law by modernizing legislation and adapting it to the requirements imposed by changes on the international level, while emphasizing the necessity of enforcing respect for the law and combating bribery ;
- The encouragement of investment depends on a number of prerequisites, such as clarity and stability of legislation, optimum utilization of human resources, and the independence and impartiality of the judiciary ;
- We cannot attain the goals we aspire to, such as entrenching economic and social reforms without adopting democracy as a basic and essential reference point, and transparency as a guarantee of economic efficiency, and legal reforms to enshrine fair competition; In the end, this leads to healthy economic performance while strengthening the values of solidarity as a social characteristic to realize social complementarity and then reform of the judiciary ;
- The Commission used a community approach to reparation for injuries in the regions that had experienced slow growth following the gross violations of human rights ;
- The Commission's approach to this issue was to reinstate those regions and to consult the local population and local actors concerning urgent development programmes, which it would then submit to the public authorities so that they could be carried out as quickly as possible ;

Reference 57 - 0.22% Coverage

4. educational and Cultural Reforms This session, which was held on March 8, was dedicated to necessary educational and cultural reforms, so as to consolidate the values of democracy and human rights in society and avoid repetition of the violations of the past. The session dealt with the repercussions of the grave violations of human rights on the educational and cultural levels, and means of achieving the desired reform with the aim of producing a generation who are conscious of and believe in the values of citizenship, tolerance, pluralism and the right to differ, and providing an environment that facilitates the establishment of relationships on the basis of respect for human dignity, and activating the mind, thinking and creating. Thus, its proceedings focused on two main points: the repercussions of the grave violations

on some educational and cultural fields, and the methods and possibilities for educational and cultural reform.

Reference 58 - 0.30% Coverage

- Language policy was tied to the political calculations of the state, and resulted in an educational structure that produced generations of Moroccans who had not mastered any language. In addition, the reforms of education and curricula that did take place were not sufficient, and the educational structure remained as it had been previously ;
- Some participants mentioned a group of practices that constituted a violation of the human rights of the Moroccan, his potential and his capabilities, considering that the 48% illiteracy in Moroccan society was a result of choices made in the postindependence period, which did not include that of building Moroccan citizens with productive minds ;
- The horizons of the Moroccan school remained open until the beginning of the 1960s to a number of choices including that of progressing along the path of modernization while preserving Moroccan traditions. However, it should be pointed out that some historians considered that this period was a transitional stage to the Moroccan educational structure during which the critical mind was killed and education of youth to love their country and their homeland with all its cultures and historical depth was replaced by a formal education that depended on a history of images.

Reference 59 - 0.27% Coverage

constructing what benefits people and what helps to develop a free national culture with original and creative ideas that renounces everything that is likely to stand in the way of the freedom of the Moroccan citizen ;

- The necessity to transcend and immortalize the past, by preserving the memory and offering recommendations and proposals likely to give rise to reforms in the educational and cultural fields with the aim of raising up creative Moroccan young people worthy of the Morocco of the 21st century ;
- It is important to promote the importance of school in society and to inculcate a culture of human rights, beginning from the first stages of studies, and concentrating on educating people in human rights and creating university courses in areas related to human rights, especially since Morocco has accumulated significant experience in this field in recent years. Our country has witnessed a dynamism that has resulted in significant original productions, both novels and films, that handle issues that may further the entrenching of increased originality and develop the process of satisfying the Moroccan citizen's desire for a human rights culture ;

Reference 60 - 0.55% Coverage

- Participants stressed the need to provide all the conditions necessary for the human rights culture to become the culture of the whole society. This should be translated into a number of controls to which everybody submits in their professional, social and family lives, and a school system that keeps pace with the reform from the earliest stages of the educational process ;
- Since 1991, Morocco has been embarked on a series of reforms focusing on this aspect, reforms that still need to be consolidated. In this context, a reminder was given of the recommendation issued by the Advisory Council on Human Rights in 1991 to instil a human rights culture in police schools and institutes, the 1994 agreement to instil human rights in schools, the issue of the National Charter for Education and Training in 1999, the reform of education curricula and the issue of new textbooks in 2002 ;
- During the last 15 years, associations and organizations from civil society have been active in promoting a human rights culture, and now the issue has been taken on as a project to be pursued by society as a whole. Therefore, work should be conducted to make the human rights culture play its part in

constructing a state based on law and freedoms and avoiding repetition of the violations of the past ; • There was a call for in-depth reform of the educational system and encouragement for the development of critical thinking.

5. legislative, executive and Judicial Reforms The participants in this session, which was held on 15 March 2005, discussed means of establishing a state based on law and institutions, and consolidating the position and independence of each branch of government in a framework characterized by entrenchment of the progress that has been going on since the 1970s. The subject was handled under two main topics. The participants in the first topic tried to analyze the gross human rights violations of the past in terms of legal protection and the role of each branch of government individually in this field. In the second topic, they looked at methods of reform so as to ensure the strengthening of the rule of law, the consolidation of democracy, and the involvement of Morocco in the international effort to make human rights an international standard.

5.1. The Gross Human Rights Violations of the Past in terms of Legal Protection

Reference 61 - 0.67% Coverage

of mechanisms for legal protection, in that in the early years of independence our country had legal codes that were advanced in terms of public freedoms and the penal system. However, after that there were grave setbacks and these codes were superseded by vaguely worded catch-all laws. Moreover, parliament was unable to combat the violations and conducted no investigations, and the public prosecutor's office did not fulfil its role of protecting society and preventing violations ; • Through its studies and analyses, the Commission revealed numerous major loopholes concerning which it would make recommendations in order to provide methods of reform and mechanisms to automatically combat violations that may occur and ensure non-repetition ; • The gross human rights violations that occurred in the period between 1956 and 1999 are attributable to two main factors: The first is the absence of standards for democratic institutions. The first constitution was not promulgated until 1962, and the first legislative elections were not held until 1963, and even these steps were taken in such a way as to empty institutions of their effectiveness. The second relates to the changes that were made to laws, in the direction of more suppression and severity, especially as evidenced in the 1958 Code of Public Freedoms, which witnessed further setbacks in 1959. The same applies to the penal system. In this connection, some criticized what they called the bad use of time by decision makers, and the way social problems that arose were ignored as if the train of development and progress were waiting for us. They called for the creation of a political climate based on accountability, responsibility, follow-up and control ; • Some explained that the party responsible for the violations of the past was not the judiciary or police officers, but rather the state in all its different apparatuses and institutions, and it is the state that must now rehabilitate and reform itself ; • The concord that Morocco experienced during the independence period was transformed into conflict when the state exploited it to enter into it as a party by using its different means and capabilities, and this is what resulted in the occurrence of the gross violations of human rights ; • Three basic loop-holes in the field of legal protection were recorded: i. The judiciary gave legitimacy and justification to what occurred; ii. Public force was used without controls; iii. Public funds were used without any restriction or condition, which enabled the gross violations to reach deeper and last for a longer period ; • The participants considered that the cause of the gross violations of human rights was the struggle for power by violent means, pointing out that violence became a big issue in our society because of its aspects in the verbal context, where the

Reference 62 - 0.62% Coverage

state and the components of the political and social scene all used it instead of dialogue. In the end, this gave rise to the following principle : "The most violent is the strongest" ; • Participants explained that human rights include all legal fields, and that the law has been given for the benefit of man, so it is impossible to imagine human rights in an ignorant and illiterate society devoid of basic necessities. Thus it was stressed that the violations of the past must be linked with the level of social and political awareness existing, in terms of the dominance of the discourse of exclusion and the resort to the security approach as the best solution.

5.2. Entry Points • The approach of the Equity and Reconciliation Commission does not make a separation between the subject of transitional justice and closing the chapter of the gross human rights violations of the past, on the one hand, and the dynamic of reform and strengthening democratic transition, on the other hand. At the same time, it pointed out that Morocco was not starting from zero in this matter, but from a very significant accumulation of experience in the field of reform that it had witnessed in recent years, and was called upon to broaden in the coming years ; • As a mediatory institution between the state and society, the Commission hopes that its final report, which it submitted to His Majesty at the conclusion of its mandate, will be a sort of practical programme for the coming decade in the field of promoting human rights and comprehensive reform on different levels, including the legal, the legislative, and the judicial ; • The audience was reminded that the Commission's subject-matter mandate covered any violation of an intensified and grave character. It established the type and the gravity of the human rights violations of the past in their contexts and the light of the standards and values of human rights, democratic principles and the rule-of-law state, and would make every effort to investigate the events that had not yet been clarified, and to uncover the fate of the disappeared, and examine the responsibilities of state and other apparatuses for the violations and the events subject of investigation ; • In addition to this, the Commission's work also fell within the context of consolidating the process of democratic transition and entrenching the state of law and institutions. Thus, its approach falls within a comprehensive process of reform, with the clarification that the accumulation of experience that Morocco has gained during recent years is focused on developing this dynamic, by doing things like

Reference 63 - 0.59% Coverage

reforming the family code, initiating a debate about the penal code and submitting a draft law criminalizing torture ; • It is important to broaden the scope of investigations that Morocco is witnessing, which reflect on social behaviours in that Moroccans have begun to realize that they have the right to call the government to account and make officials accountable. In this context, there was a call for political mechanisms to be developed, so that political forces are able to negotiate amongst themselves and to accept the results, so that parliament might become the arena for political action and thus rebuild its credibility, and so that the government might spring from the parliament after sound elections ; • The importance of retraining and reforming the judiciary was stressed, as was the necessity for the core of political decision-making to spring from political institutions, while searching for possible ways of broadening the scope of legislation ; • It was stressed that the current stage requires concord and mutual consent between all components of society to fortify democratic transition ; • Major reforms must be undertaken focusing on the judiciary and the public authority apparatuses, methods of disbursing public funds, and the provision of mechanisms of control. However, building foundations for the future does not only depend on good intentions but requires sustained long-term work based on comprehensive reconciliation looking always to the future ; • It was stressed that the group of issues linked to judicial and legislative reforms must be linked to the question of restoring the credibility of these institutions and regaining the confidence of society, which is the best way of solving the problems and removing the constraints that face the country because of the accumulation of disappointments ; • It was stressed that culture, the media and education play a decisive role in constructing a broad base in order to enshrine

comprehensive social reform, that the principles of social justice and respect of human rights and democracy must be considered as national constants, and that the idea of formulating a sort of social charter must be pursued ; • It was affirmed that the most stable countries in the world are the democratic countries, and that consolidating a state based on law and institutions remains the correct and most ideal policy. However, it should be remembered that there should be universal accord regarding national constants represented in the privileged

Reference 64 - 0.57% Coverage

i. The principles and the process of submitting Recommendations The work of the Equity and Reconciliation Commission regarding the preparation of the recommendations that crown its Final Report is based on the following principles : • The country's choice to move towards the future by promoting and protecting human rights in the context of the country's democratic transition ; • Consolidating the process of the reform going on in various fields related to human rights ; • The provisions of the statute dealing with the submission of proposals intended to ensure non-repetition and erase the effects of the violations and restore and strengthen trust in the rule of law.

In implementation of the above principles, the recommendations of the Commission are intended to be in harmony with major developments, including : • Political will at the highest levels, sustained by the constitutional democratic monarchical system, which ensures the sanctity of the state and its institutions, making democracy, the spirit of citizenship and the dissemination of a culture of human rights and duties the best protection of society from extremist and terrorist tendencies, releasing the potential of Moroccans so that they are all in complete harmony with the aspirations of their country and rising to the internal and external challenges that face it ; • The appeal by His Majesty to reform the justice system, in order to ensure its sanctity and to make its rulings aspire to equity in a framework of independence from all forms of physical or moral pressure, and considering the principle of the independence of the judiciary a basic element of democracy which meant: to ensure the smooth administration of justice, and guaranteeing its constitutionality; to ensure the rule of law and the equality of all before the law in all situations and circumstances; and to ensure the role of the justice system in promoting democracy and development ; • The broader humanitarian dimensions of the National Initiative for Human Development, which is based on the principles of political democracy, economic efficiency, social cohesion, work, innovation, and enabling the citizen to use his qualifications and abilities in the most advantageous manner ; • Constitutional entrenchment, in that during the two constitutional revisions of the 1990s, the country has witnessed constitutional entrenchment of human rights as internationally recognized ;

Reference 65 - 0.05% Coverage

- Resuming the process of modernization of the legal structures related to individual and collective rights and freedoms so as to establish human rights in the warp and woof of public and private laws ;

Reference 66 - 0.48% Coverage

- Establishing a qualitative review of the form and content of the Family Code, in the framework of its conformity with universal standards of human rights, the values of justice and equality, and the purposes of the Islamic Shari'a. This enabled the foundation stone to be laid with regard to the problem of the specificity and universality of a legal structure that safeguards the rights of women and children and establishes the family on a basis of justice and equity ; • The reinstatement of cultural rights and the Amazigh language as a component of national identity ; • Political emphasis on the necessity of a separation of powers on the level of the administration and state and providing citizens with swift and

efficient means of defending their rights, by establishing a new concept of authority in daily dealings with the administration or by means of a justice competent for that ; • Putting in place mechanisms for mediation and intervention, in order to protect human rights from violations or to clear up violations. While recalling these major gains, which were launched in the form of laws mechanisms, and national programmes and workshops, the Commission hopes that its recommendations and suggestions will be an additional contribution to the process of entrenching human rights, anchoring democracy and strengthening the rule of law. On this basis, the Commission is very aware that the proposals that it submits within its mandate seek no more than to give guidelines and procedures that should consolidate legal safeguards when the legally competent authorities undertake the task of modifying legislation to institute, nullify or complement.

ii. Criteria and methods used in preparing the Recommendations In preparing the recommendations, the Commission relied, in addition to the political will of the highest authorities in the country and the process of reform currently going on : • International human rights standards and the benefit gained from comparative experiences in the field of transitional justice round the world, and also the

Reference 67 - 0.31% Coverage

innovations formulated with regard to the relationship between human rights and democracy by the United Nations and international parliamentary bodies ; • The conclusions from the Moroccan experience of the grave violations committed in the past as regards the types, the extent, the responsibilities of institutions linked to them, and the deficiencies in the fields of law, justice and security governance ; • Academic studies and research into the legislative and regulatory texts relating to human rights, or those that might have a positive or negative impact on how they are respected or enjoyed. This enabled clarification of what safeguards and procedures needed to be consolidated and strengthened, complemented or put in place for the first time ; • Studies that helped one to examine the consolidation of the prerogatives and the roles of the bodies involved or intervening in the field of human rights, in terms of the way they carry out their tasks ; • Dialogue and consultation meetings with the political parties, associations and non-governmental organizations involved and the representatives of the public authorities, which resulted in the receipt of various proposals on the subject ; • In-depth discussions among members of the Commission, in groups or through the teams and experts.

Reference 68 - 0.22% Coverage

1. Consolidating Constitutional protection of human Rights It is not the Commission's prerogative to take a position concerning political or party points of view revealed during public debate on the constitution. Giving due respect to the two branches that the constitution grants the right to initiate amendments, namely His Majesty the King and parliament, the Commission recommends, in its thinking about issues requiring to be taken into account in the heart of the constitution of the country, when possible, the following : • Consolidating respect for human rights and improving security governance, especially in case of crises ; • Promoting the constitutional entrenchment of human rights as internationally recognized by clearly rooting the principle of the supremacy of relevant international treaties and conventions and in general the international human rights standards and humanitarian law over domestic laws ;

Reference 69 - 0.30% Coverage

It should be given the responsibility of preparing an annual report concerning the administration of justice ; • Promoting security governance by strengthening security and maintaining public security both in ordinary circumstances and during crises ; • Clarifying and strengthening the powers of parliament to

investigate facts regarding the respect of human rights and uncovering any events that prove the occurrence of gross violations, while obliging it to establish investigation committees with wide-ranging powers to examine cases where it appears that human rights have been violated or are liable to be blatantly violated, and granting the minority also the right to establish such committees ; •

Acknowledging the responsibility of the government to protect human rights and to maintain public security, order and administration ; • Composing a high-level committee of constitutional, legal and human rights experts to be entrusted with the task of examining the requirements and the repercussions of the proposed constitutional requirements and to submit suitable proposals to achieve conformity between domestic legislation and international conventions ratified by Morocco in the field of human rights.

2. Continuing to accede to international human Rights law Conventions

Reference 70 - 0.03% Coverage

3. Consolidating legal and Judicial protection for human Rights 3.1. Legal Reinforcement of Individual and Collective Rights and Freedoms

Reference 71 - 0.46% Coverage

3.2. Gross Violations of Human Rights

- Conformity of domestic criminal legislation with the country's commitments and obligations as regards international standards, and the crimes of enforced disappearance and arbitrary detention, and in particular as regards : • Inserting the definitions, descriptions and constitutive elements attributed to them in international conventions into the Moroccan Penal Code, insofar as they are crimes ; • Inserting the elements of responsibility relating to them and the sanctions laid down, as internationally defined ; • Punishment of perpetrators of violations and their accomplices with the most severe sanctions, whatever their rank, position, or post, or whatever relationship they had with the restriction of freedom or the implementation of the law, or whoever carried out their orders or by virtue of their post supplied assistance or expertise, in addition to anybody who concealed or failed to provide information relating to the crimes of enforced disappearance, arbitrary detention or torture ; • Empowering government officials, agents of public authorities, or minor officials who are charged with carrying out the orders of their superiors to report any information indicating that the said crimes are being committed or that there is an attempt to commit such crimes, whatever the capacity of the authorizing authority ; • Laying down special procedural provisions with regard to the protection of the victims of gross violations of human rights and their rightful claimants, when necessary, in terms of giving them a hearing during the investigation and allowing them to stand as a civil party before the competent judicial body, and in terms of rehabilitation and reparation for injuries ; • The Equity and Reconciliation Commission records its great interest in the government's initiative to draw up a draft law to criminalize torture, in implementation of the Advisory Council on Human Rights recommendation, and

Reference 72 - 0.08% Coverage

- Consolidating the latest revision of the Code of Penal Procedure with additional provisions and other complementary ones to enshrine respect for human rights and move towards an inquisitorial justice instead of an adversarial one, and to correct deficiencies that have been revealed by practice and have hindered those working in the profession ;

Reference 73 - 0.17% Coverage

7. implementation of the Recommendations of the advisory Council on human Rights concerning prisons

- Implementation of the recommendations issued by the Advisory Council on Human Rights contained in its special report on conditions in penitentiary institutions issued in 2004 so as to reform conditions in them by broadening the prerogatives of the sentencing judge, and implementing the systems of conditional release and judicial supervision, and preparing regulations relating to the system of pardon in terms of its procedures and criteria ;
- The Ministry of Justice should inform the Advisory Council regularly concerning the progress of implementation, the difficulties it has faced, and their causes ;

Reference 74 - 0.12% Coverage

8.1. Government Responsibility for Security • Implementation of the effects of the principle that says the government is corporately responsible for security operations, the maintenance of public order, the protection of democracy and human rights, and obliging it to inform the public and parliament of any incidents requiring the intervention of public force, and to give a detailed account of the course of events, of security operations and their results, responsibilities and any corrective measures to be taken.

Reference 75 - 0.08% Coverage

- The political parties represented in parliament should implement the principle of their political and legislative responsibility for the protection of human rights and basic freedoms, whenever there are claims of gross violations of human rights, or grave actions that violate or threaten the values of society and its democratic choice ;

Reference 76 - 0.30% Coverage

8.7. In-service Training for Public Authority and Security Agents in the field of Human Rights

- Training and in-service training programmes in the field of human rights and the culture of citizenship and equality should be drawn up for security officials and agents, and those entrusted with maintaining order, using international standards and national legislation relating to human rights ;
- Guidebooks and didactic materials should be continuously prepared and published to raise awareness and sensitize security officials and agents concerning the principles of good governance in the fields of security and respect for human rights.

9. promoting human Rights through education and awareness-raising • The Equity and Reconciliation Commission calls for a national comprehensive and long-term plan to be drawn up regarding this, on the basis of the national consultations currently taking place round the Advisory Council on Human Rights' initiative regarding the National Plan for Educating in and Promoting Human Rights. In this context, the Commission considers that the priorities for the promotion of human rights include the following : - Inserting the fight against illiteracy and informal education into the National Programme for Education on Human Rights ;

Reference 77 - 0.03% Coverage

- Keeping in mind the principles of human rights as a formative background for the compilation of textbooks ;

Reference 78 - 0.12% Coverage

- Improving the effectiveness of training courses and research groups in the field of human rights in universities, UNESCO chairs, and research groups, and these experiences should be disseminated to all Moroccan universities ;
- Inserting human rights training, in-service training, and sensitizing programmes within the framework of a work plan aiming to instil the principles of human rights and human rights education in the programmes and policies of the sectors involved in promoting the culture of human rights ;

Reference 79 - 0.48% Coverage

- Developing the institutional capacities of non-governmental organizations working in the field of human rights and the professionalism of their staff. They should be considered an essential partner when drawing up any policy or work plan seeking to promote human rights culture or education. The continuation and the effectiveness of this partnership should be ensured ;
- The culture of human rights should be enshrined in all streams of national culture by means of research, organizing conferences, supervising training courses and publishing intellectual journals ;
- Renewing religious thought, reforming religious education, and using the audio-visual media, literature and the arts to spread the human rights culture.

10. academic Research relating to the ancient and modern history of Morocco • All national archives should be preserved, and their regulation should be coordinated between the different departments involved. A law should also be enacted to regulate the conditions of preservation, hours of opening to the public, the conditions for consulting them, and the sanctions for defacing them ; • The content of the country's history syllabi should be gradually reviewed ; • In addition to the tasks entrusted to it, the institute it has recommended to be set up should conduct documentation, research, and publication concerning the historical events relating to the gross human rights violations of the past, development of human rights and democratic reform issues.

11. The mandate of the advisory Council on human Rights to Combat Violations • The mandate of the Council to combat violations automatically or on the basis of a request should be strengthened, in the field of investigation and fact-finding in cases of human rights violations ; • It should monitor the conduct of trials ; • The degree of cooperation given by public authorities in its investigations into violations should be increased. The Council should be given access to relevant information and reports and be informed of corrective steps taken regarding them.

Reference 80 - 0.52% Coverage

• The report should be considered as a public national reference document that should be included in the educational structure in general, and in the occupational and in-service training of authority agents, security officials, judges, judicial assistants, lawyers and officers in penitentiary institutions ; • Activities of a publicity and educational nature should be organized to present the report to ordinary citizens ; • Lectures and meetings should be organized to present and discuss the report internationally in order to publicize the Moroccan experience in the field of truth and reconciliation ; • A national event should be held in honour of the women who were victims of the grave human rights violations of the past, and as an acknowledgement of the suffering they endured and the sacrifices they made.

V. monitoring the implementation of the Commission's Recommendations • A committee should be set up in the Advisory Council on Human Rights to monitor the implementation of the recommendations issued by the Commission in the fields of truth, reparation for injuries and guarantees of non-repetition. This committee should be invested with wide prerogatives and powers to contact all authorities and bodies involved, and should submit a regular report on the results of its work, including progress made or delays occurring in this field. The Council should also include this report in its annual report on the status

of human rights in Morocco ; • A mixed ministerial committee should be set up by the government to monitor the implementation of the Commission's recommendations, on which should be represented the Ministries of the Interior, Justice, Culture, Communication, Education and Vocational Training ; • The implementation of the results of the work of the Commission in the field of reparation for injuries should be monitored by a monitoring mechanism responsible for the official preparation of decisions issued in the field of compensation of victims and for the procedures for notifying them. It should forward them to the government for implementation and should ensure the implementation of the Commission's recommendations regarding programmes of reparation for other injuries ;

Reference 81 - 0.50% Coverage

• Technical committees should be set up to monitor the implementation of community reparation projects, on which should be represented the sectors and departments involved. It should provide the government and the monitoring committee emanating from the Advisory Council on Human Rights with regular reports concerning the results of its work ; • Mixed monitoring committees should be set up composed of elected officials, representatives of local authorities, non-governmental organizations and representatives of the technical government departments involved, which should be entrusted with monitoring the implementation of the projects proposed on the commune, provincial and regional levels. It should submit regular reports to the local communes, the government, and the monitoring committee emanating from the Advisory Council on Human Rights.

Vi. preserving the archive of the Commission and Regulating its use • The entire archive of the Commission should be transferred to the Advisory Council on Human Rights, which should be responsible for keeping and organizing it, and also for defining the means and the conditions for consulting it.

VII. The Official Public Apology • The Commission recommends that after its Final Report is submitted, the Prime Minister make a declaration before parliament containing an official apology in the name of the government for the state's responsibility for the results of the gross human rights violations of the past.

Viii. ensuring health Cover for the Victims • The Commission recommends ensuring basic health cover according to Law No.00-65 for persons who have been established to be victims of human rights violations ; • It suggests that by virtue of this, these persons be inserted, in the first stage, in accordance with Clause 4 of this law, as pensioners whose contributions the state will pay on their behalf to the bodies responsible for health cover ; • In a second stage, the Advisory Council on Human Rights could help to prepare a draft amendment on this point, in agreement with the parties involved, by virtue of which this group could be clearly included in the framework of this law ;

Reference 82 - 0.24% Coverage

Xii. The Cases of the Tagounite Centre detainees In view of the fact that in 1971 the public authorities decided to arrest numerous persons in Casablanca, without any justification, and to transfer them to Tagounite, where it left them in detention for about two years in a place there called Glaoui's Castle ; And in view of the fact that the Commission has received a number of petitions from those persons and their rightful claimants, it has been forced to declare that it is not competent to adjudicate those requests, in view of the provisions enunciated in its statute ; But in view, nevertheless, of the arbitrary nature of the said detention, and the state's responsibility for it, whether in legal or human rights terms, and in view of the extremely severe conditions which those involved endured, and the different physical and moral injuries that ensued ; The Commission recommends that all the necessary steps be taken to grant reparations for all the injuries suffered by the above-mentioned detainees and their rightful claimants.

Reference 83 - 0.37% Coverage

The Equity and Reconciliation Commission received a number of petitions relating to unpaid and requisitioned labour during the Azilal, Beni Mellal, and Marrakech disturbances of 1960, the Tagleft disturbance of 1967 and the disturbances of March 1973, totalling 1,168. After studying these files in the light of the Commission's statute; and after examining the provisions in force nationally and internationally concerning requisitioned labour, like Dahir 10/8/1915 relating to meeting military needs, Dahir 25/3/1918 concerning the regulation of requisitioned civilian labour, Dahir 16/10/1926 concerning requisitioned labour relating to means of transport, Dahir 2/12/1929 concerning requisitioned labour in means of transport, and Dahir 18/3/1931 concerning meeting military needs, Dahir 2/9/1931 concerning means of transport, Dahir 26/5/1933 concerning means of transport, Dahir 22/7/1938 concerning meeting military needs, Dahir 13/9/1938 concerning the general organization of the state in time of war, Dahir 19 June 1940 concerning the use of persons and resources, and the World Labour Organization Convention No. 29 relating to requisitioned labour, and World Labour Organization Convention No. 105 relating to the cancellation of compulsory labour and international human rights law ; It became clear that the work which the inhabitants of the above-mentioned regions were charged with by the public authorities fall into the category of requisitioned and unpaid labour and in some cases-particularly in 1967-into the category of the works of Promotion Nationale.

Reference 84 - 0.23% Coverage

In view of the provisions of its statute, the Commission concluded that this requisitioned and unpaid labour did not fall within its competence. In view of the principles of justice and equity, and in view of the sufferings of the persons who, as requisitioned and unpaid labour, undertook various tasks most of which harmed various regions that subsequently suffered from neglect and marginalization, the Commission recommends the departments concerned to take the necessary steps and measures to give individual and community reparations for the injuries suffered by the said regions. At the same time, the provisions of the Dahirs and decrees relating to requisitioned and unpaid labour must be amended to bring them into conformity with the provisions of international charters relating to human rights, which the Moroccan constitution says that the country must abide by. The Commission therefore recommends that these provisions be revised to bring them into conformity with these charters.

Reference 85 - 0.25% Coverage

1. preserving the archive The Commission believes that many ministries, departments and security services hold registers and documents that could help in the future to shed more light on the truth about the gross human rights violations and clarify many obscure points in the history of the nation. While waiting for a comprehensive and ambitious policy for organizing the national archive (the subject of a separate recommendation), the Commission therefore humbly requests His Majesty the King, in his capacity as protector of the freedoms and higher interests of the nation, to issue an order to the Prime Minister to issue as a matter of urgency a memorandum instructing all ministries, public and semi-public departments, and security apparatuses to maintain the archive and preserve it at least in its present condition. The memorandum must stress that the perpetrator of any act likely to result in the defacing or total or partial destruction of official documents and registers will be liable to the measures and sanctions enunciated in the law.

Reference 86 - 0.38% Coverage

The number of deaths following the excessive and disproportionate use of public force uncovered by the investigations of the Commission far exceeds the files submitted to it concerning the disturbances. The Commission therefore recommends : • A toll-free number should be set up at the Advisory Council on Human Rights to enable the families who have not been able to submit their files to the Commission, to submit a petition seeking compensation. This file should be submitted to the committee that will be charged with monitoring the implementation of the rulings of the Commission on such matters, in accordance with the same conditions and criteria prepared by the Commission during its mandate; • The families should be provided with any information received by the Commission, and should be informed of the burial place whenever that becomes possible.

The investigations conducted by the Commission led to significant progress in finding out about the violations committed following the civil disturbances of 1965, 1981, 1984 and 1990. However, these results were not final, especially as regards the identity and the burial places of a number of victims. The Commission considers that it is the responsibility of every public institution (security apparatus, hospital etc.) and every person (particularly persons working in security apparatuses, medical services, and mortuaries etc.) who has information or details, albeit partial, that are likely to help in uncovering the truth, to present himself before the monitoring committee at the Advisory Council on Human Rights to submit whatever evidence he possesses.

Reference 87 - 0.16% Coverage

Taking into account the significant number of children and teenagers who died following the civil disturbances, the Commission recommends that they be given a memorial and their memory be preserved by all possible means, in cooperation with their families and the local communes involved (local councils, educational institutions, youth and popular education associations). This memorial could take various forms, like naming educational institutions, youth clubs, streets, sports grounds or squares after them, or organizing moments of remembrance for them in educational institutions, accompanied by activities about human rights in general and the rights of the child in particular.

Reference 88 - 0.01% Coverage

The Advisory Council on Human Rights Publications 2009

Reference 1 - 0.13% Coverage

The Commission devoted these meetings to settling various issues relating to the preparatory, strategic and planning aspects of its work, including in particular: • Looking for suitable ways to translate the directives contained in the King's speech that he gave on the occasion of the installation of the Commission into procedures, action plans and programmes, and to strengthen the principles and approaches spelt out in the recommendation of the Advisory Council on Human Rights;

Reference 2 - 0.07% Coverage

- Forming partnerships with all parties operating, involved or concerned with the issue, including victims, human rights organizations, government departments, public authorities, economic and social stakeholders, as well as elements of the media and academia;

Reference 3 - 0.32% Coverage

When the draft statute was discussed, defining the terms used in relation to the competencies of the Commission, international standards, and the innovations of the former Arbitration Commission, took a long time. The discussion was characterized by rich interventions concerning the definitions and standards that the Commission must use in studying and settling the issue of the violations of the past. Everybody emphasized the importance, indeed the necessity, of innovation concerning the definition of the grave violations of human rights falling within the jurisdiction of the Commission. Attention was also drawn to the cases not dealt with by the previous commission, which require innovation by the current Commission, like the cases of torture and violations arising from the use of public force following social disturbances. In this context, it was proposed that the definitions found in the draft statute be interpreted flexibly so that the door of innovation may remain open. While the Commission evoked the definitions used by the former Arbitration Commission, it observed the new prerogatives it had been given with regard to other types of injuries

Reference 4 - 0.19% Coverage

Given the nature of the tasks entrusted to it, their size and type, and the time frame set for them, the Commission adopted a flexible method of employment within the administrative units according to the progress of the work. Thus it recruited administrative staff and personnel with different specializations to monitor and implement its programmes. It also depended on skills put at its disposal by the Advisory Council on Human Rights, government departments and non-governmental and national organizations. The Commission also sought the assistance of Moroccan experts with different specializations to carry out studies, draw up reports and submit consultation documents, whenever necessary.

Reference 5 - 0.07% Coverage

- Personnel placed at the disposal of the Commission by: - The Advisory Council on Human Rights; - Public departments; - Non-government organizations. • University researchers; • Consultants and experts; • Assistants; • Partners; • Practitioners.

Reference 6 - 0.03% Coverage

The Secretariat of State in Charge of Youth and Sportt The Committee for the defence of Human Rights

Reference 7 - 0.06% Coverage

The National Agency of Land Registration & Ordnance Survey 1 The Former Ministry of Human Rights The Ministry of National Education The Ministry of Public Health
The Advisory Council on Human Rights External Assistants

Reference 8 - 0.22% Coverage

With regard to its administrative and technical needs, the Commission opened the door to the greatest possible number of candidates with intellectual ability and moral integrity, based on academic and institutional relationships (the National Agency for the Employment of Executives, universities and colleges, and civil society) with knowledge and experience in human rights and related fields. It also observed the same criteria in employing assistants to process the files and organize the information system and documentation, in addition to requiring that they had qualifications in these tasks. In general, the candidates were selected on the following basis: • Job applications delivered directly to the Commission; • Job applications received by the Commission from the National Agency for the Employment of Executives;

Reference 9 - 0.08% Coverage

The criteria were determined according to the tasks that the candidates would be entrusted with. The Selection Committee used the following criteria: • Merit and ability; • Sense of responsibility; • Initiative; • Academic experience in fields relating to human rights; • The ability to work in a team.

Reference 10 - 0.12% Coverage

Involving a significant number of young people in achieving the tasks of the Commission, including a large number of university graduates and civil society activists, not only enabled the Commission to benefit from their skills but also gave them the opportunity to be involved in the Commission's project and the process of settling the grave human rights violations of the past, and to become more closely acquainted with human rights issues in general.

Reference 11 - 0.67% Coverage

In its work, the Commission sought to implement the principles and criteria of international human rights law and international humanitarian law relating to the right to remedy and reparations, and the right to know the truth. It also sought to implement the major conclusions of national experiences around the world where nations were involved in processes of frank disclosure of the truth with the aim of reconciliation with self and with history. This was regarded as an open-ended pathway of preserving the memory, granting justice to the victims and strengthening national unity on all levels. Therefore, since its foundation, the Commission worked for justice and reconciliation starting from basic principles in order to realize strategic goals in accordance with a determined plan that was adjusted according to the various stages of the work. These strategic goals were incorporated in the framework of supporting democracy and human rights and facing the future through reading the past with wisdom and insight. Thus, it used a

non-judicial approach, depending on the principles of equity and the spirit of justice, and springing from an in-depth analysis of the uniqueness of the Moroccan situation, and from a deep-rooted faith in the extent of the contribution that the Moroccan experience can make to the development of international principles relating to transitional justice.

The purpose of the Equity and Reconciliation Commission as a "non-judicial mechanism" to deal with the grave human rights violations of the past was to dress the wounds, provide reparations for injuries, as well as reinstatement and reinsertion, and draw lessons for reconciling Moroccans with their history and themselves, and continuing to release their potential. All this was in the context of a holistic approach intended to confirm the facts, to provide a public acknowledgement of the human rights violations of the past and to put in place basic safeguards to ensure non-repetition and to promote the construction of a state based on law and institutions.

In order to achieve wider aims in the context of truth, equity and reconciliation, the Commission sought to include in its statute a broad interpretation of those aims by enunciating the following competencies and tasks: • Establishing the categories and the degree of gravity of the past violations of human rights in their contexts and in the light of human rights criteria and principles, democracy and the rule-of-law state;

Reference 12 - 0.07% Coverage

- Formulating recommendations and proposals meant to preserve the memory; • Formulating recommendations and proposals meant to ensure non-repetition, to erase the effects of the violations, and to restore and strengthen trust in the rule of law and respect for human rights;

Reference 13 - 0.03% Coverage

Strategic Goal 1: Establishing the nature and gravity of the human rights violations committed in the past

Reference 14 - 0.03% Coverage

- Investigating whether the grave violations constitute a systematic pattern of human rights violations;

Reference 15 - 0.07% Coverage

- Making proposals and recommendations about community reparations for the regions that were harmed as a result of the occurrence of widespread grave violations and those where illegal centres were located where grave human rights violations had been committed.

Reference 16 - 0.07% Coverage

- Consulting and cooperating with associations working in the field of local development in order to prepare project proposals in the framework of community reparations for the regions harmed as a result of the occurrence of grave human rights violations.

Reference 17 - 0.07% Coverage

- Formulating recommendations and proposals meant to restore and strengthen trust in the rule of law and respect for human rights; • Conducting research; • Organizing conferences and workshops about the contexts and the circumstances and the concomitant factors.

Reference 18 - 0.04% Coverage

Strategic Goal 4: Launching dynamic dialogue and group thinking about the components of reform, reconciliation and the promotion of human rights

Reference 19 - 0.05% Coverage

- Disseminating the values and the culture of human rights and citizenship; • Promoting the culture of dialogue between society (victims, families, associations, universities) and the state;

Reference 20 - 0.03% Coverage

- Organizing media activities to raise awareness of the human rights culture in educational institutions;

Reference 21 - 0.45% Coverage

IV. Main Fields of Activity and their Significance The activities programmed in the action plan helped to integrate the work of the Commission within a general trend toward preserving the memory of the events of the past grave human rights violations on the one hand, and on the other promoting the changes and reforms necessary to ensure non-repetition. To achieve this, the Commission developed many types and methods of investigation: analysis of files; on-site research; and specialized studies (legal, political and anthropological). It also developed a comprehensive approach to reparations, and ensured constant communication with the victims or their relatives and representatives, and with civil society activists and formers of public opinion. Preserving the memory was a crosscutting task that was borne in mind in all the activities of the Commission. Whether in the context of the investigations and reparations, research, conferences open to the public, or dialogue sessions, the preoccupation with preserving the memory was a powerful factor. The Commission also created an archive that undoubtedly helped to respond to the same preoccupation. The Commission focused on a set of principle axes to undertake this task, of which the most important elements can be summarized as follows: • Giving a hearing to victims, their families and their representatives; • Visiting enforced disappearance centres and places of illegal detention, and submitting proposals about converting them to preserve the memory; • Research and analysis in fields connected with history and memory; • Liberating the memory by means of public expression.

Reference 22 - 0.12% Coverage

Investigation is a basic component of the process of uncovering the truth. It requires skilled personnel familiar with all the problems connected with grave human rights violations, the activities of non-governmental organizations, local archives, or other sources of information. It also requires persons with legal skills and/or experience in law enforcement (judges, lawyers, etc.) and methods of communication and public relations.

Reference 23 - 0.28% Coverage

In the course of carrying out its mission,³ the Commission surveyed all the types of injury that victims had suffered, and developed a comprehensive approach to the subject that helped to restore dignity to victims and their families. In developing this approach, the Commission started off by evaluating the results of the experience of the former Independent Arbitration Compensation Commission, and examined the experiences of truth and reconciliation committees around the world. It came to

conclusions of benefit to the Moroccan experience, as well as studying and analyzing memoranda and proposals about reparations received from human rights bodies and political parties.

3. Safeguards for the Future From the beginning of its work,⁴ the focus of the Commission's attention was on the future. It accomplished this by conducting a comprehensive analysis of grave human rights violations, and submitting recommendations about the legal and institutional reforms necessary and the safeguards required to ensure non-repetition.

Reference 24 - 0.19% Coverage

In dealing with grave human rights violations, preserving the memory is a major element for victims, families and society as a whole. Apart from the dimension mentioned above, preserving the memory also plays three basic roles. The first is pedagogical/educational; the second is to safeguard the future and protect it from grave human rights violations; and the third is its contribution to rewriting history. The Commission also identified enforced disappearance and arbitrary detention centres linked to a large part of the grave human rights violations committed in the past, in order to submit proposals and recommendations concerning converting them into spaces for preserving the memory in a positive manner.

Reference 25 - 0.22% Coverage

Here the Commission determined the location and state of illegal detention centres or locations that were formerly used for secret detention and enforced disappearance, and inspected them in order to take appropriate decisions concerning them in cooperation with the public authorities, and to consult national and local human rights associations. Thus the Commission organized visits to the regions where such centres were located, including in particular the Rif (Dar Bricha), the south east of the country (Agdez, Tagounite, Kelaât M'gouna, Sekkoura, Tamdakht, Imilchil, Tazmamart etc.), the Atlas (Khenifra, Tagleft, Oulmes, Moulay Bouazza, Leqbab, Sountat, Ahermoumou), Casablanca (Derb Moulay Cherif, Courbiss, the Complexe), and Rabat (Dar El-Moqri and the Fixed Points in the suburbs of Rabat).

Reference 26 - 0.26% Coverage

In drawing up its action plan, the Commission started from a philosophy whose basis was that while the equity and reconciliation project was aimed primarily at victims and their families, it also affected numerous other parties and participants. Thus the process is a social concern in that the mission that has been entrusted to the Commission is not limited to it or to the victims, but rather involves all of society. What is required is not only to explain or record these subjects, but also for proposals and innovations to be submitted by all stakeholders and parties so as to build the future. To this end, the Commission sought to organize meetings and consultations, to conclude partnerships and cooperation agreements, and to draw up joint programmes with various national human rights organizations, local development associations in regions affected by violations, Moroccan universities, and the political class and trade union organizations.

Reference 27 - 0.56% Coverage

The public hearings gave priority to restoring dignity to victims whose rights had been violated, morally reinstating them, preserving the collective memory, sharing the sufferings, and alleviating the psychological repercussions of their sufferings. In addition to its educational role as regards those responsible, public opinion, society and succeeding generations, it also constituted a moment of great

significance in the process of equity and reconciliation. From the end of the 1990s, there appeared numerous writings and publications dealing with the sufferings experienced by the victims as a result of the violations. They helped in great measure to disseminate the facts concerning the violations, their types and dates, and thus constituted one of the most important references for establishing the truth. The Commission organized seven public hearings in seven regions of Morocco dedicated to listening to oral testimony about the grave human rights violations experienced by Morocco during the period between 1956 and 1999. These testimonies were presented in public by victims of violations before members of the Commission and in the presence of representatives of human rights, cultural, political and trade union organizations, public authorities and elected bodies, the audio-visual and written media, men and women of the press, and foreign and local guests.

The thinking behind the organization of the hearings focused on their educational role in creating greater readiness and growing receptivity in society and the state, and entrenching in them the conviction that they must hold fast to, defend and protect the principles of human rights, and bring an equitable and final conclusion to the episode of grave violations, and prevent repetition. This was done by publicizing and acknowledging in an official and public manner the scale of these violations, the continuing sufferings that the victims, their families, relatives and friends continued to endure, and the psychological, moral and physical effects on the local and national levels.

Reference 28 - 0.15% Coverage

The Commission dealt with all the components of the human rights movement, victims' associations, family coordination committees, and all the associations and centres concerned with human rights culture, the Moroccan Bar Association, and also local development associations in the regions where the former secret detention centres were located. It also organized meetings with associations for the defence of the human rights of Moroccans resident abroad, in particular Europe, and also with associations and representatives of victims in those countries.

Reference 29 - 0.11% Coverage

- Meetings organized between the Commission on the one hand and the Follow-up Committee (composed of the Moroccan Organization for Human Rights (OMDH), the Moroccan Association for Human Rights (AMDH), the Moroccan Forum for Truth and Equity (FVJ)) and the Civil Network for the Monitoring of Grave Human Rights Violations composed of 44 associations and the Victims' Families' Committee;

Reference 30 - 0.09% Coverage

The goals set out by the Commission for these meetings can be summarized as follows: • Understanding the positions of political and social stakeholders concerning the issue, their approach to analyzing the context of the grave human rights violations, and their suggestions regarding safeguards against repetition in the future;

Reference 31 - 0.29% Coverage

The Commission sought to involve universities and national academic research centres in the different workshops it started as it tried to uncover the truth concerning the violations of the past and to provide safeguards against repetition, and encouraged them to become involved in the new dynamic that Morocco was witnessing in enshrining the democratic transition and consolidating the culture of human

rights. It also tried to keep universities abreast of this process by initiating a group of studies about branches of transitional justice, modern history, the literature of political detention, and human rights in general.

As part of the activities of the study and research group, a group of research students were recruited to conduct the unfinished part of the group's programme dealing with reports on the historical context of the events linked to the grave violations of human rights. They were charged with preparing chronological and bibliographical data entry cards and summaries of the events involved. The group also sought the help of many

Reference 32 - 0.17% Coverage

university researchers to conduct studies and to give advice on specific subjects relevant to the mandate of the Commission (public freedoms, justice, the constitution and human rights, public officials and the maintenance of order, arbitrary detention, enforced disappearance, civil society and human rights etc.). For their parts, the Information System Unit sought the help of a significant number of research students for the pre-analysis of files submitted to the Commission, and the work group in charge of reparations sought the help of a team of assistants most of whom were research students in law.

Reference 33 - 0.47% Coverage

Seeking to increase the extent to which the universities were able to monitor its work, the Commission organized communication meetings with students, lecturers and research students of different levels and disciplines in a group of universities (Rabat, Casablanca, Settat, El-Jadida), to publicize the Commission in terms of the context of its creation, to explain the content of its statute, and to present its achievements stage by stage. These meetings were sponsored in part by members of the Commission, and were spiced with copious discussions about how to help the universities keep abreast of the studies, the analysis, and the academic research into issues connected with the process of reconciliation, in such a way as to enable them to help to follow up the process in depth after the Commission's mandate came to an end. During these meetings, the Commission emphasized the necessity of the Moroccan university playing its role in protecting society, consolidating the rule-of-law state and enshrining the human rights culture. In view of the importance of Amazigh culture in Moroccan society, and in view of the fact that significant numbers of the victims and the regions involved in the violations were Amazigh, the Commission concluded a partnership with the Royal Institute for Amazigh Culture by virtue of a protocol of cooperation signed by the two parties in Rabat on 20 December 2004. This protocol aimed at "cooperation with the aim of ensuring simultaneous interpreting and translation of documents of the Commission and public hearings into Amazigh, and the exchange of expertise, and to help in preparing recommendations relating to safeguards for the protection of human rights as internationally recognized".

Reference 34 - 0.75% Coverage

The cooperation also covers the submission of recommendations about safeguarding the exercise of linguistic, cultural, economic and social rights, and the exchange of expertise in the various fields of human rights, administration, anthropology, history, media and education. In this context, the Commission appealed to the Institute to think, alongside the Commission, about recommendations that may be beneficial regarding linguistic and cultural rights, in that this is an important issue that could represent a task for the Institute to follow up after the end of the Commission's mandate.

6. Centres and Bodies with International Expertise The Commission's general approach was to utilize the experience of mechanisms of transitional justice accumulated by national and international political and

human rights bodies when settling the grave human rights violations of the past. Thus, after its installation and the beginning of its work, the Commission invited members and experts from similar international committees from different countries, Latin America and southern Africa for example, to exchange views, ideas and experience on many subjects. These visits generated specialized presentations and led to the organization of work sessions and concentrated training sessions in specific areas of the activities of truth committees, whether regarding methods of internal organization and work groups, communication strategy, investigations and individual hearings, public hearings and reparations. The Commission was careful to ensure close cooperation with the International Centre for Transitional Justice and all parties connected with it in different fields. A contractual agreement was concluded with this body to benefit from their advice and their reports on specific subjects including: public hearings, communication and media strategy, reparations, preparing the Final Report, and preserving the memory. A flexible, open and participatory programme was agreed developing according to the progress and needs of the work of the Commission.

On the basis of a proposal by the truth committee experts, the Commission also hosted the Fifth International Conference of Truth and Reconciliation Committee Experts. Those experts considered the Commission a sort of added value in international processes of transitional justice, especially in the Arab Islamic region. The proceedings of the conference focused on three topics: communication strategy, public hearings, and methods of preparing the Final Report. The proceedings of the conference enabled the members of the Commission and representatives of national and international human rights organizations to consult and to exchange views on these subjects and thus to enrich the Moroccan experience.

Reference 35 - 0.02% Coverage

Rabat in cooperation with the Arab Institute of Human Rights

Reference 36 - 0.02% Coverage

The components required to positively transcend the human rights violations of the past

Reference 37 - 0.04% Coverage

It tackled the subject of transitional justice and Morocco's approach to turning the page on the grave human rights violations of the past.

Reference 38 - 0.05% Coverage

Rabat, organized by the Moroccan Organization for Human Rights (OMDH) with the support of the Equity and Reconciliation Commission and the Friedrich Ebert Institute.

Reference 39 - 0.02% Coverage

Amsterdam, organized by the Association of Moroccans for Human Rights

Reference 40 - 0.07% Coverage

with the assistance of the Commission and organized by the International Federation for Human Rights and the Follow-Up Commission for the

Recommendations of the National Symposium on Grave Violations of Human Rights held in November 2001

Reference 41 - 0.07% Coverage

The conference dealt with the subject of the process of searching for the truth and granting reparations in Morocco during the period from 1956 to 1999 and the role of the Commission in the process of bringing final closure to the issue of grave human rights violations.

Reference 42 - 0.05% Coverage

The conference studied the historical contexts of human rights violations, the gains that had been achieved until now and the work of the Equity and Reconciliation Commission in this regard.

Reference 43 - 0.10% Coverage

Rabat, organized by the International Federation for Human Rights with the assistance of the Equity and Reconciliation Commission and in cooperation with the International Coalition for the International Criminal Court, the Truth and Equity Forum (FVJ), the Moroccan Organization for Human Rights (OMDH) and the Moroccan Association for Human Rights (AMDH)

Reference 44 - 0.04% Coverage

Commission and organized by the International Centre for Transitional Justice and the Centre for Information, Documentation and Training in Human Rights (CDIFDH)

Reference 45 - 0.08% Coverage

The proceedings of the workshop dealt with international experience of transitional justice, with the participation of representatives of human rights organizations, associations for the defence of human rights, and civil society from Algeria, Yemen, Sudan, Iraq, Lebanon and Morocco

Reference 46 - 0.02% Coverage

associations and Moroccan human rights associations in Europe

Reference 47 - 0.04% Coverage

A presentation of the work undertaken by the Commission, and the Moroccan approach to turning the page on the past violations of human rights

Reference 48 - 0.03% Coverage

It studied methods of consolidating cooperation in giving medical support to victims of human rights violations

Reference 49 - 0.02% Coverage

for Human Rights Studies
The Arab Institute of Human Rights (Tunis)

Reference 50 - 0.01% Coverage

The International Fund for Promoting Human Rights

Reference 51 - 0.04% Coverage

A presentation of the Moroccan experience in handling the issue of the grave human rights violations of the past and the work of the Commission

Reference 52 - 0.14% Coverage

A study of cooperation in the media field, studies in the field of human rights and an Arab symposium on mediation mechanisms A study of cooperation programmes between the two parties in the field of training and documentation courses in the field of transitional justice A study of fields of cooperation between the Commission and the International Centre for Transitional Justice
A consultation about the Commission's programmes for rehabilitating the health of victims of past grave human rights violations

Reference 53 - 0.03% Coverage

Opportunities in Morocco for financing and supporting the work of human rights defence organizations

Reference 54 - 0.03% Coverage

The International Centre for Transitional Justice The International Federation for Human Rights

Reference 55 - 0.01% Coverage

Human Rights

Reference 56 - 0.12% Coverage

Plenary meetings about issues connected with the philosophy of reparations which the Commission will adopt in handling the issue of the grave human rights violations of the past
Defining the broad outline of a programme of cooperation between the Commission and the Centre A presentation of the Moroccan experience in the field of transitional justice and the role of the Commission in promoting democracy and human rights in Morocco

Reference 57 - 0.14% Coverage

Publicizing the Commission and the state of human rights in Morocco and especially the legal and administrative status of the Centre for Documentation, Information and Training in Human Rights
Completion of the consultation about the future cooperation programme between the International Centre for Transitional Justice and the Commission A presentation of the mission of the Equity and

Reconciliation Commission and its approach to uncovering the human rights violations of the past and promoting democracy

Reference 58 - 0.01% Coverage

The EuroMediterranean Human Rights Network

Reference 59 - 0.02% Coverage

A study of the opportunities for cooperation in the field of promoting human rights

Reference 60 - 0.01% Coverage

Human Rights Watch

Reference 61 - 0.10% Coverage

A study of methods of cooperation between the Commission and the Centre that is preparing the action plan in Morocco focusing on assisting in the consolidation of human rights and democracy in partnership with nongovernmental organizations A study of opportunities for cooperation between the Commission and the International Centre for Transitional Justice

Reference 62 - 0.05% Coverage

An exchange of views about the state of human rights in Morocco and the work of the Equity and Reconciliation Commission in terms of its mission and the prerogatives vested in it.

Reference 63 - 0.01% Coverage

Human Rights Watch

Reference 64 - 0.10% Coverage

- Communication was maintained continuously with human rights associations and local development associations in the regions that witnessed the occurrence of grave violations. Many associations were considered as partners in the Commission's programmes, whether investigations, reparations, or submitting proposals and recommendations about the reforms necessary;

Reference 65 - 0.31% Coverage

The archive was very diverse and the short-term goals aspired to through the production and collection of these documents were very varied. However, the political goal that governed the organization of this vast collection of documentary resources was to help preserve the institutional memory and through that the collective memory. To do this, the archive was considered as a homogeneous mass that must be processed and preserved in such a way as to put it at the disposal of society, in accordance with a comprehensive vision embodied in respect for the principles of human rights and in such a way as not to conflict with respect for privacy or the provisions of national law. The Commission defined the basic task of the unit as to collect, process, classify, preserve and manage access to all the information and

documents whether produced by the Commission or received in the course of carrying out its mission. It sought to draw up specific guidelines and principles to regulate access to the archive, seeking to preserve the institutional memory of the Commission. Thus, the unit was entrusted with the following tasks:

Reference 66 - 0.29% Coverage

For this purpose, a mini-committee was created in charge of coordination at the level of the information system unit, the reparations unit and the unit in charge of managing the files to ensure the maximum amount of coordination and harmony. The main tasks in the first stage, which lasted about six months, from the beginning of February 2004 to the end of August 2004, were as follows: • Receiving petitions and details, or additional documents, whether arriving by post, deposited directly at the Commission headquarters, or referred to by the Advisory Council on Human Rights; • Registering items in the registry; • Controlling operations relating to the reception and handing over of files for purposes of initial analysis and entering information in the data base; • Recording petitions and accompanying documents in the data base; • Classifying and arranging files in the archive devoted to them. A list of initial categories was used according to the groupings followed in the initial analysis and in the data base, to ensure the maximum degree of consistency;

Reference 67 - 0.16% Coverage

Since the beginning of its work of preserving the documents prepared by it and those it had received, the Commission was aware of their value and benefit, both in the short term in terms of facilitating the activities and programmes of the Commission, and in the long term in enshrining the principle of transparency and preserving the collective memory as regards grave human rights violations. To this end, the Commission carried out a set of technical operations necessary to preserve the archive, as well as drawing up a rough plan of how to manage this collection in the future.

Reference 68 - 0.03% Coverage

- Thematic and dialogue sessions, organized in the headquarters of the Advisory Council of Human Rights;

Reference 69 - 0.42% Coverage

II. The Information System To facilitate the mission entrusted to it, the Commission prepared various programmes to gather, process and analyze the data and information, in order to uncover the truth and grant physical and moral reparations for the injuries suffered by victims and their rightful claimants. To facilitate handling the information and data obtained from different sources (petitions received by the Commission, investigations, hearings, testimonies and communications, studies and research), the Commission used an information system whose main goals were to set up a data base on victims to help in managing the files, and processing and analyzing the information. The data base the Commission set up from the very beginning of its work was a principal tool for checking the data and facilitating access to information in as short a time as possible. It also permitted the extraction of statistics that helped the work groups, the ad-hoc committees and the administrative units to carry out their tasks, as well as to prepare analytical, classificatory and statistical reports of violations. To help data to circulate within the Commission, a local network was established separate from the public network of the Commission which was linked to the Internet. A general conception of the data base was drawn up, bearing in mind the

mandate of the Commission and the method and means used to establish the type and gravity of the violations of the past, in their contexts and in the light of international human rights criteria.

Reference 70 - 0.10% Coverage

In addition to the main goals of the information system, namely to use modern scientific means to process data and to help in the development of research and studies in the field of human rights, we can summarize the most important practical goals as follows: • Creating a data base about victims of past human rights violations, opening a file for each victim;

Reference 71 - 0.15% Coverage

To enable the Commission to obtain information about the nature of the files and to make a preliminary classification of grave violations, it carried out a preliminary study (pre-analysis) of a sample consisting of 8,420 petitions. This involved petitions received directly by the Commission within the legal deadline (12 Jan - 13 Feb 2004) and also petitions that were referred to it by the Advisory Council on Human Rights, recorded after the deadline set by the former Independent Compensation Arbitration Commission (after the end of December 1999).

Reference 72 - 0.08% Coverage

- To encourage media and communication professionals to become involved in and to enrich the Commission's activities, especially concerning the subjects of investigations and their results, and awareness-raising and education in the fields of reconciliation and human rights culture.

Reference 73 - 0.21% Coverage

The creation of the Commission aroused the enthusiasm of society and uncovered a sort of support and positive response to this historic initiative. It was this climate that the Commission sought to utilize in the media to communicate with the different sectors including victims and their families and representatives. The Commission sought to define priorities in the first stage of its communication plan including for example focusing on some cases of special symbolic importance (e.g. receiving the families of Benbarka and Almanouzi and giving them a hearing). The plan also focused on human rights bodies and non-governmental organizations, and political parties and trade unions, in addition to organizing communication meetings with universities and academic research centres.

Reference 74 - 0.02% Coverage

The Advisory Council on Human Rights Publications 2010

Reference 1 - 0.38% Coverage

The Justice and Reconciliation Commission is composed of one President and 16 members, half of whom are members of the Human Rights Advisory Council and the other half from outside this organization, in view of ensuring a representation of various trends, experiences and fields of specialty, all brought together by a same will to safeguard and promote human rights. Upon His appointment of the Commission's president and members on January 7, 2004, His Majesty the King delivered a grand speech, bestowing upon the Commission a historic role and significant responsibilities, as His Majesty deemed it equivalent to a Truth, Justice and Reconciliation Commission.

Reference 2 - 0.38% Coverage

The Commission was mandated to assess, research, investigate, arbitrate and make recommendations about the gross human rights violations that occurred between 1956 and the end of 1999. These violations include forced disappearances, arbitrary detention, torture, sexual abuse and deprivation from the right to life, as a result of unrestrained and inadequate use of state force and coerced exile. This mission's goal is to foster development and dialogue, and to create the grounds for national reconciliation that is crucial for a democratic transition in our country towards a state of justice and law, and for advancing the values and culture of citizenship and human rights.

Reference 3 - 0.20% Coverage

The Commission's truth-seeking mission further led it to conduct investigations, collect testimonies, examine official archives, as well as gather information and facts from various sources, in order to: • Determine the nature and scale of the violations, in light of the norms and principles of human rights, democracy and state of justice and law;

Reference 4 - 0.24% Coverage

The Commission prepared a final report presenting the conclusions of its research, investigations and analyses about the violations and their contexts, as well as its recommendations and suggestions to safeguard the memory and ensure the non-repetition of what happened, eradicate the violations' aftereffects, and restore and bolster trust in a state of law and the respect of human rights. Following is the executive summary :

Reference 5 - 0.44% Coverage

The lack of a clear definition in Moroccan law of the notion of forced disappearance, which is in fact a violation of all internationally-protected human rights, first being the right to life, has led to a proliferation of labels being used when discussing human rights issues in Morocco. These descriptions range from "those with an undetermined fate", "abducted with an undetermined fate", "abducted", etc., but the truth is that these descriptions are not specific to forced disappearances only as per the internationally acknowledged definition, but include other forms of deprivations than the right to live, as a result of public forces' excessive or inadequate use of power during social riots or as a result of torture and ill-treatment, or in the course of armed clashes.

Reference 6 - 0.27% Coverage

Taking into account that the period covered by the Equity and Reconciliation Commission is the longest compared to similar experiences (43 years), that the various crises of political violence have caused gross human rights violations, involving state actors and sometimes non-state actors too, and the lack of reliable records and academic studies covering specific periods in the contemporary history of Morocco, the Commission's truth-seeking mission took on various aspects.

Reference 7 - 0.80% Coverage

During the national debate on the issue of human rights, this notion was used to cover several categories of missing people. For the sake of more clarity, the Commission adopted a work methodology based on field investigation coupled with records-based research.

- Field investigation : The Commission visited the families of missing individuals and received them in its offices, to collect their testimonies, define their demands and explain its approach and methodology in handling this issue. It also held closed hearings with witnesses who had spent time with individuals considered missing. The Commission further carried out inspection visits to former detention centers and held hearings with former wardens who had practiced in these centers.

- Research and examination of records and documents : the Commission gathered and analyzed all the records made available by various local and international sources (lists, reports, etc.), and which, in one way or another, point to cases of disappearances (lists of local human rights groups, of Amnesty International, and of the UN Working Group on Enforced and Involuntary Disappearances). It also examined the answers presented by security forces and the Royal Armed Forces, as well as the documents that the International Commission of the Red Cross have regarding those individuals who went missing as a result of armed clashes in the Southern provinces.

Reference 8 - 0.15% Coverage

Having reached the end of its mandate, the Commission believes that a significant progress has been made in the period between January 2004 and November 2005 in finding the truth about the gross human rights violations Morocco has experienced in its past.

Reference 9 - 0.27% Coverage

- Severe human rights violations occurred during these events, mainly characterized by the abuse of many citizens of their right to live, including children, and individuals who did not participate in any way in these events;
- These abuses resulted from the disregard of international human rights principles related to the conditions set for the practice of force by public authorities. Indeed, public forces exerted inadequate and excessive force, sometimes leading to death;

Reference 10 - 0.15% Coverage

The Commission's mission represents an important step towards establishing the right to know the truth, by way of non-conventional methods. It has contributed to finding the truth about the gross human rights violations Morocco has experienced in its past.

Reference 11 - 0.25% Coverage

The concept of reparations represents all measures and processes aimed at establishing the rights of victims of human rights violations. These measures and processes generally assume various forms, whether in the classical form of financial compensation or other forms of reparations such as rehabilitation, reinsertion, restoration of dignity or of confiscated rights, and recuperating whatever victims of violations lost or missed.

Reference 12 - 0.44% Coverage

- The international law includes important principles and norms in various international and regional covenants related to human rights. These include clear clauses stipulating the right of victims of gross violations to bring forth their complaints before the national competent parties. In fact, certain covenants include clear clauses stipulating the right of victims to demand compensation and reparations;
- The Human Rights Committee as well as the other committees involved in this issue shed particular importance in their efforts made both at the judicial and theoretical levels. Thus, along with the political efforts that the committee aforementioned deployed, a document was adopted, stipulating the basic principles according to which victims of human rights

Reference 13 - 0.67% Coverage

One of the Commission's tasks, provided for in its statutes, is to draw a comprehensive assessment of the process of settling the past gross human rights violations, including an assessment of the former arbitration board. Thus, the Commission achieved the following:

- Study and analyze all the files that the arbitration board handled to settle the material and moral damage of victims and their right-holders, who suffered from forced disappearance and arbitrary detention. This included examining the decisions made by the board to compensate, disregard or cast as not falling under its jurisdiction. By this, the Commission formed a sensible opinion about the nature and quality of the efforts made by the former arbitration board;
- Take note of the former board's general approach, including the principles and rules it applied in view of assessing and determining the compensations to be made to the victims and their right-holders. In this context, the Commission prepared a document about the former arbitration board, which was used as a resource in assessing the national experience of settling past gross human rights violations. Furthermore, this document shed light on

Reference 14 - 0.44% Coverage

The Commission viewed the issue of financial compensation as one of the basic rights of victims of gross human rights violations. As such, it adopted the adequate principles and accounting units to ensure equality and solidarity among victims, and established therefore the bases for compensation which aimed mainly at granting compensation on the basis of the violations suffered. Moreover, consistent with its comprehensive approach, the Commission gave equal importance to the other issues related to reparations. Thus, it included other elements in its reparations program, such as medical and moral rehabilitation, social reinsertion and settling the employment problems, administrative and financial issues as well as settling legal issues and expropriation cases.

Reference 15 - 0.10% Coverage

- International standards of human rights, Morocco's international commitments, the lessons and experiences drawn from transitional justice processes around the world;

Reference 16 - 0.32% Coverage

In order to diagnose the state of the victims with possible physical or moral damage, the Commission examined the information contained in the medical documents contained in their files and prepared a preliminary report on the medical situation of the victims of grave human rights violations.

This report assesses the nature and level of the diseases inflicting the victims of human rights violations, and suggests alternatives and strategies for the permanent treatment of those suffering from diseases or disabilities, or for all the victims and their right-holders.

Reference 17 - 0.12% Coverage

The Commission further took care to involve non governmental organizations active in the sectors of human rights, local development, as well as other agencies and development organizations active in these regions.

Reference 18 - 0.23% Coverage

The reconciliation process in Morocco took off in the early 1990s, assuming multiple facets and covering various sectors. This process was grounded in the appeal of certain constitutional laws, reaching a peak with the 1996 constitutional reforms, which brought the opposition into the government and resulted in a consensus over a set of laws related to the state of institutions and human rights.

Reference 19 - 0.25% Coverage

Moreover, major institutional developments were achieved in order to advance and safeguard human rights. This started with the creation of the Human Rights Advisory Council and its development in the context of the Paris Principles. Other developments included the institution of administrative courts, the creation of the Royal Center for Amazight Language and Culture, as well as the Higher Council for Audio-Visual Communication.

Reference 20 - 0.23% Coverage

In the context of these political and institutional developments, the issue of human rights took a great leap forward at both an intellectual and cultural level. As a result, the legal process took act of the latest international principles and schools of thought on human rights laws as well as transitional justice processes across the world, in a bid to face Morocco's past gross human rights violations.

Reference 21 - 0.56% Coverage

means of dialogue, fostering the constituents of reconciliation, bolstering the democratic transition in our country based on a state of justice and law, and advancing the values and culture of citizenship and human rights". Based on the conviction that reconciliation is a continuous process, the Commission adopted an inclusive approach in all of its programs and activities, whereby it immediately sought to foster the right environment for free discussions and serious dialogue about the factors of reconciliation. It did this by holding several seminars, meetings and field visits covering almost all of the national

territory, coupled with a work methodology rooted in the close and continuous collaboration of the multiple actors brought together by a common understanding. This methodology contributed to better understand what happened with regards to the violations, flaws, and breaches and paves the way towards building a common memory, often lacking in times of repression.

Reference 22 - 0.40% Coverage

In an effort to bolster the process of reconciliation and communal memory-building, the Commission expanded the scope of beneficiaries from the reparations programs, by integrating regions in which residents felt they had been marginalized as some form of communal punishment, either because of specific past events that saw gross human rights violations, or because former secret detention centers were located there. As such, the communal reparations program was formulated as an effort to translate on the ground the spirit of positive citizenship and social solidarity and to bolster the judicial approach and participatory democracy in the socio-economic development plans being carried out in Morocco.

Reference 23 - 0.32% Coverage

Thus, the Commission gave a priority to the rehabilitation of victims of gross human rights violations, through rehabilitation and reinsertion programs, efforts to restore their dignity, through communal reparations empowering the society at both the local and national levels towards participating in the ongoing democratization of the country, to restore trust in a state of institutions and the rule of law, and to ensure their effective participation by way of a sense of citizenship that fosters social justice and the belief in a truly modern democratic society.

Reference 24 - 0.60% Coverage

Reconciliation is a crucial factor in guaranteeing the non-repetition of past events. As such, the Commission believes that the reform process initiated in the 1990s must carry on towards establishing the full respect of human rights in the law and by way of institutions and practices and building a state of law. This is essential for democracy to be real, not just a mere sequence of mechanisms and forms. The Justice and Reconciliation Commission was therefore tasked to carry out the truth-seeking mission and establish equity for victims of violations, in order to alleviate their sufferings, enable them to restore their dignity and sense of citizenship as well as contribute to the society's understanding of past events and pursue its efforts to foster human rights as one of the main bases for national solidarity and social cohesiveness. The Commission is convinced that this is all necessary to create the genuine conditions to overcome tension, mistrust and despair within the society and to avert the inclination to settle conflicts through violence.

Reference 25 - 0.30% Coverage

Moreover, these sessions convinced both the state and the society even more of the need to adopt and safeguard human rights. Thus, it became a deep-rooted conviction to work on decisively turning the page on the gross violations and ensuring their non-repetition, and this, by way of publicly and officially admitting the scope of these violations and the sufferings brought upon the victims, their families, relatives and acquaintances, as well as their psychological, moral and financial damage at both the local and national levels.

Reference 26 - 0.37% Coverage

In this context, the Commission members carried out field visits to the regions that suffered gross human rights violations in the past, in order to communicate directly with the victims and their families. These visits marked a crucial opportunity to hear what the victims have to say or to support them morally and socially, or still, to complete the accounts already existing in their files. Furthermore, the Commission set up centers, in cooperation with the Ministry of Interior, to receive applicants and their right-holders and obtain their testimonies, in Azilal and Beni Mellal, and in the Southern and Northern provinces of the Kingdom.

Reference 27 - 0.45% Coverage

The Commission firmly believes that turning the page on the past and building a modern and democratic state and society in which rights and duties are respected is first and foremost a social issue that engages all Moroccans, either through their social, political or communal channels. As such, the Commission organized a series of consultative and academic meetings in a number of universities and with political, union and communal institutions. It also relied on the national cognitive and scientific expertise to carry out studies and projects necessary for its final report, and related to issues such as forced disappearances, arbitrary detention, education in human rights, social gender and violations, as well as to supplement the Commission's recommendations and suggestions.

Reference 28 - 0.08% Coverage

Human rights and civil society activists participated in these events, as well as numerous intellectuals, academic researchers and practitioners.

Reference 29 - 0.59% Coverage

These sessions sought to include the general public in an open and responsible debate about the political, intellectual and historical aspects of the human rights violations that took place in Morocco since the independence, and about the causes that led to these violations and the repercussions they had on the country's political development. They further aspired to develop programs and practical plans towards establishing a state of law and institutions that safeguard freedoms and ensure the non-repetition of violations.

Cognitive and field experts participated in these sessions, as well as individuals active in the civil and political societies. The Commission deployed great efforts to analyze the political, economic and social contexts of the violations, and to search for effective means to overcome the sanctioning tools violating human rights. The sessions concluded with recommendations for institutional, legal and educational reforms that guarantee the respect of freedoms and the establishment of a state of law.

Reference 30 - 0.19% Coverage

In the drafting of its recommendations, the Commission based itself on the following: • International norms related to human rights and compared experiences of transitional justice, as well as efforts achieved in the realm of human rights and democracy in the context of the United Nations or international parliamentary commissions;

Reference 31 - 0.30% Coverage

- Studies and academic research addressing the legislative and organizational bodies and texts related to human rights, highlighting those that potentially hinder or, on the contrary, impact positively the respect of human rights. This enabled the Commission to determine those texts that should be strengthened and those that should be cancelled, or again those that need to be completed or enacted as guarantees and norms;
- Studies allowing to determine the prerogatives and responsibilities of human rights activists;

Reference 32 - 0.45% Coverage

In order to guarantee the non-repetition of the gross human rights violations that took place in Morocco and in order to advance the ongoing reforms, the Justice and Reconciliation Commission makes a set of recommendations about institutional reforms and a national strategy to struggle against impunity and the follow-up of the implementation of the recommendations.

1- Consolidating constitutional guarantees of human rights, namely by ascribing to the principle of the primacy of international law on human rights over internal law, and the presumption of innocence and the right to a fair trial. The Commission also recommends reinforcing the principle of separation of powers, and prohibiting constitutionally any interference by the executive power in the functioning of the judiciary power.

Reference 33 - 0.17% Coverage

The Commission believes that this strategy needs to be grounded in the rules of international law on human rights, by making the penal law consistent with Morocco's international commitments, by: • Incorporating and defining the responsibility and sentences as stipulated in international tools;

Reference 34 - 0.15% Coverage

- Establishing specific requirements for the protection of victims of gross human rights violations and their right-holders, as for example during hearings, by ensuring means of recourse for civilian parties to appeal for justice for rehabilitation and reparations.

Reference 35 - 0.10% Coverage

C- Readapting the penal policy and legislation requires the strengthening of the legal and procedural guarantees against human rights violations and the implementation of the

Reference 36 - 0.25% Coverage

recommendations that were presented at the national forum on penal policy held in Meknes in 2004. It also necessitates to develop a clear and precise definition of violence against women, in conformity with international norms, and put into action the recommendations of the Human Rights Advisory Council specific to prisons (expand the scope of jurisdiction of the judge in charge of carrying out sentences, adopting alternative sanctions, etc.).

Reference 37 - 0.27% Coverage

Taking into account that the period covered by the Equity and Reconciliation Commission is the longest compared to similar experiences (43 years), that the various crises of political violence have caused gross

human rights violations, involving state actors and sometimes non-state actors too, and the lack of reliable records and academic studies covering specific periods in the contemporary history of Morocco, the Commission's truth-seeking mission took on various aspects.

Reference 38 - 0.15% Coverage

During the national debate on the issue of human rights, this notion was used to cover several categories of missing people. For the sake of more clarity, the Commission adopted a work methodology based on field investigation coupled with records-based research.

Reference 39 - 0.37% Coverage

- Research and examination of records and documents : the Commission gathered and analyzed all the records made available by various local and international sources (lists, reports, etc.), and which, in one way or another, point to cases of disappearances (lists of local human rights groups, of Amnesty International, and of the UN Working Group on Enforced and Involuntary Disappearances). It also examined the answers presented by security forces and the Royal Armed Forces, as well as the documents that the International Commission of the Red Cross have regarding those individuals who went missing as a result of armed clashes in the Southern provinces.

Reference 40 - 0.15% Coverage

Having reached the end of its mandate, the Commission believes that a significant progress has been made in the period between January 2004 and November 2005 in finding the truth about the gross human rights violations Morocco has experienced in its past.

Reference 41 - 0.14% Coverage

The IER based its decisions on six criteria of experience, treating all victims with equal respect: • Deprivation of liberty; • Specificity of forced disappearance (as a complex violation of the very basic human rights mainly the right to life)

Reference 42 - 0.11% Coverage

In all of its decisions, the IER paid specific attention to gender, taking into consideration the specificity of suffering endured by women in their experience with grave violations of human rights.

Reference 43 - 0.37% Coverage

During its mandate the IER opened a medical unit to take care of victims needing immediate/urgent care. Moreover, in the course of its work, the IER analyzed 9992 files of individuals who declared that they suffer physical or psychological illness caused by the grave human rights violations they experienced. As a result, the IER recommended the following: • The extension of obligatory health benefit to all victims and their relatives • The immediate care of close to 50 victims suffering from severe or chronic after-effects of violations

- The creation of a permanent mechanism to give medical assistance to victims of grave violations of human rights

Reference 44 - 0.45% Coverage

In order to guarantee the non-repetition of the gross human rights violations that took place in Morocco and in order to advance the ongoing reforms, the IER is making a series of recommendations concerning institutional reforms, a national strategy for the fight against impunity, and the necessary follow-up stages for implementing the recommendations.

1- Consolidating constitutional guarantees to human rights.

Namely by ascribing to the principle of the primacy of international law on human rights over domestic law, and the presumption of innocence and the right to a fair trial, the Commission recommends the reinforcement of the principle of separation of powers, and the constitutional prohibition of any interference by the executive power in the functioning of the judiciary power.

Reference 45 - 0.17% Coverage

The Commission believes that this strategy needs to be grounded in the rules of international law on human rights, making the penal code consistent with Morocco's international commitments, by : • Incorporating and defining the responsibility and sentences as stipulated in international instruments;

Reference 46 - 0.15% Coverage

- To establish specific requirements for the protection of victims of gross human rights violations and their right-holders, as for example during hearings, by ensuring means of recourse for civil parties to appeal for justice through rehabilitation and reparations.

Reference 47 - 0.20% Coverage

C- Finalizing new legislation on the penal code and criminal system requires the strengthening of the legal and procedural guarantees against human rights violations and the implementation of the recommendations presented at the national forum on penal policies held in Meknes in 2004. It also necessitates developing a clear and precise definition of

Reference 48 - 0.17% Coverage

violence against women, in conformity with international norms, and put into action the recommendations of the Human Rights Advisory Council (CCDH of Morocco) specific to prisons (expanding the scope of jurisdiction of the judge in charge of carrying out sentences, adopting alternative sanctions, etc.).

Nigeria - HRVIC Report-FULL> - § 517 references coded [5.98% Coverage]

Reference 1 - 0.01% Coverage

SUBMITTED BY HUMAN RIGHTS VIOLATIONS INVESTIGATION COMMISSION MAY, 2002 SUMMARY,
CONCLUSIONS AND RECOMMENDATIONS 1

Reference 2 - 0.01% Coverage

villages". In a sense, this Report is also a lament. However, unlike Oliver Goldsmith's *The Deserted Village*, this particular lament is a lament, not about the disappearance of village life but about the aftermath of military rule in Nigeria and the consequential disappearance and violations of the human rights and essential freedoms of Nigerians. Like Oliver Goldsmith, I can then say:

Reference 3 - 0.02% Coverage

This personal accumulation of wealth led to the decay of our society. Public and private morality reached its nadir; and the casualties included human dignity, human rights and our basic freedoms. We also experienced institutional and structural decay.

This Report has attempted to provide an over-view of the extent of our moral, physical and institutional decay under military rule. The proscription and circumscription of our human rights and freedoms under military rule were symptomatic of a much serious malaise, the departure from constitutional or limited government and with it the absence of accountability and transparency in public life. This was the ultimate decay involving the personalization of the governmental process around the military ruler.

Reference 4 - 0.01% Coverage

We provided the platform, through our Public Hearings and Special Sessions, held across the various geopolitical zones of the country, for alleged victims and alleged perpetrators of human rights abuses and violations to bare their minds in public. But we were careful not to take their accounts at their face value. We had to devise means of corroborating them.

Reference 5 - 0.01% Coverage

This is not to deny that public hearings are inherently problematic. For example, during our public hearings in Abuja, Lagos and Port Harcourt, alleged perpetrators of human rights abuses and violations blatantly denied the human rights abuses and violations alleged against them by their victims and families.

Reference 6 - 0.01% Coverage

Volume 5 of this Report, any society that has gone through the trauma of unbridled human rights violations and abuses is invariably confronted with a choice among two options: (a) Revenge and/or Nuremberg-type trials; and (b) Forgiveness and Reconciliation.

Reference 7 - 0.01% Coverage

Which option is chosen will depend on what each truth commission is set up to accomplish. Indeed, of the five truth commissions referred to above and analyzed in Volume 2 and Volume 5 of this Report, it was only in the case of Argentina that there were criminal prosecutions of members of the military junta and their collaborators for gross human rights abuses. In the other four cases, Chile, Guatemala, South Africa and Uganda, the aim was for people to know what happened in their respective countries during the dark days of military rule.

Reference 8 - 0.01% Coverage

During our session in Port Harcourt, Rivers State, the Commission succeeded in brokering a Peace Accord among the warring factions and groups in Ogoniland. In particular, we managed to unite and amalgamate the Ogoni Four and the Ogoni Nine into the Ogoni Thirteen. As the New Nigerian Editorial of Friday, 16th February 2001 observed, "The Peace Accord signed by the warring factions in Ogoniland...will go down in the sociopolitical development of this country as one of the landmark achievements of the Human Rights Violations Investigation Commission."

Reference 9 - 0.01% Coverage

I cannot address the issue of citizenship and marginalization in this Foreword other than to observe that they are central to the consideration of human rights as group, ethno-cultural, ethno-religious or collective rights as well as to the foundations of federalism in the country, going as far back

Reference 10 - 0.01% Coverage

As one of our research teams pointed out, quite correctly, our national experience with federalism shows that the problem of marginalization is at the bottom of minority ethnic group fears of the curtailment or violation of substantive human rights—the right to selfdetermination, the right to the promotion of their cultural rights, and their citizenship rights, especially the right to equitable participation in the cultural, economic and political life of the country.

Reference 11 - 0.01% Coverage

A refreshing and confidence-building fall-out from the work of our Commission is the raising of the issue of minority rights as a core dimension of gross human rights violations and bringing it on the agenda of national debate. In this way, such public consciousness may engender well-thought out remedial public policies and constitutional guarantee of minority rights, thereby facilitating national reconciliation.

Reference 12 - 0.01% Coverage

Unfortunately, our various military rulers, like all dictators, were unable to draw this distinction between themselves and the State. Their intelligence outfits danced to their tune and their agents also saw themselves as beyond and above the law. This led to the hounding of journalists and those who criticized their administrations and policies. Intellectuals and human rights activists, among other critics of military rule, were arrested and jailed, without recourse to due process, in the so-called interest of State security.

Reference 13 - 0.01% Coverage

This sums up the character and odious dimension of military rule in the country, as elsewhere. The fall-out, in our case, was the gross violations of the human rights of Nigerians, which are enumerated and elaborated upon in this Report, particularly in Volumes Two, Four, Five and Six.

Reference 14 - 0.01% Coverage

We thank the various national and international non-governmental organizations that worked closely with us, providing useful insights into the nature of human rights abuses in the country.

Reference 15 - 0.01% Coverage

Human Rights Violations Investigation Commission. Yet, the setting up of this Commission could be considered an indictment of the Nigerian political military class.

Reference 16 - 0.01% Coverage

THE GLOBALIZING CONTEXT OF HUMAN RIGHTS PROTECTION 34.

Reference 17 - 0.01% Coverage

It is in the context of the challenges of globalization that, in making our recommendations, we have taken cognizance of the fact that the choices Nigeria makes to strengthen respect for human rights and consolidate the nascent democratic experiment in the country will have an impact on the rest of Africa. Nigeria must be a model for Africa in this respect.

Reference 18 - 0.01% Coverage

ESTABLISHING THE CAUSES AND NATURE OF HUMAN RIGHTS VIOLATIONS 37.

Among the first tasks of the Commission, when it began its work, was the identification of the causes and nature of all gross human rights violations in the country. This particular task required paying special attention to all cases of human rights violations committed in the country during the period (15 January 1966 to 29 May 1999) under the Commission's purview.

Reference 19 - 0.01% Coverage

As we shall try to show in the recommendations, justice and the protection of human rights in Nigeria must be anchored on fundamentally redesigned and restructured institutional (constitutional-legal, cultural, political and social) and structural (economic and resource-distributive) frameworks, which will help to forge and create in every Nigerian, a civic sense of belonging to a nation where we can all live with relative peace and security, a nation in which there is enough space for Nigerian citizens to be what God wishes them to become.

Reference 20 - 0.03% Coverage

In the Introductory Volume of this Report, we drew attention to the historical context for understanding not only the development of constitutional provisions for human rights but also the violations of those rights in the country. The Introductory Volume also provided a theoretical basis for understanding and

appreciating the burden of our colonial legacy and its implications for, and impact on human rights violations in the country. 45.

It is clear from the analysis in the Volume that our present predicament is a product of a particular historical conjuncture. It is evident that colonialism by itself constituted a gross violation of the highest order of the human rights of the peoples of Nigeria. But the colonial inheritance can no longer be presented as the only or major reason for that predicament. Independence provided the opportunity for dissociation from that inheritance and for a new beginning. Unfortunately, the country's political class trifled with and, therefore, lost that golden opportunity for a national renaissance.

Reference 21 - 0.01% Coverage

problematic issues of the future promotion and protection of human rights, the national question and democracy and development in the country.

Reference 22 - 0.01% Coverage

The Commission is of the considered view that a work of this nature clearly needs to be insulated from the vagaries and red tape of the bureaucracy. Given that the Government has always been perceived as the accused in human rights violations, it is important that the Commission be seen to be insulated from or independent of the government. If this is seen to be the case, the better are the chances of the Commission being seen to be objective. This is more so in a society where suspicion of governments and their agencies runs high.

Reference 23 - 0.02% Coverage

Volume Two of this Report considered the implications of the challenges posed by contemporary processes of globalization for the promotion and protection of human rights in Nigeria by looking at the International Dimensions and Contexts of Human Rights. Globalization has made it impossible for any nation to try to be an island unto itself even it wished to be so.

The Volume examined at considerable length the implications of this internationalization or universalization of the core moral imperatives and values of the evolving international law and practice of human rights

Reference 24 - 0.02% Coverage

for Nigeria's municipal law generally and more specifically for its human rights domestic law and practice. It is clear that membership of such sub-regional, regional and universal organizations like the Economic Community of West African States, the African Union (the successor to the Organization of African Unity) and the United Nations, impose on their member-states the obligation not only to subscribe to the common values enunciated in the relevant human rights provisions of treaties, conventions and other international legal instruments to which they have duly acceded by virtue of their membership of such supranational organizations, but also to reflect them in their domestic laws and practice and to implement them as public policy accordingly.

Reference 25 - 0.02% Coverage

In the Volume, we traced the historical and philosophical(jurisprudential) legal origins of some of the major themes relevant for our work and we concluded that, in the main, the international community

remains an important moderating force in guaranteeing the promotion and protection of human rights in the world generally and, particularly, in many developing nations.

In Africa in particular, the issues of human rights can no longer be left to the whims and caprices of its political leadership and the state. For example, it is of great significance that, even in the harsh and dark days of the military regime of the late General Sani Abacha, the regime sought international legitimacy by setting up a National Human Rights Commission, despite its atrocious and abysmal human rights record. This is obviously evidence of what international pressures can do to memberstates.

Reference 26 - 0.01% Coverage

Because the Commission believed that it did not possess all the wisdom and skill necessary to undertake its work, it commissioned researchers to help it unearth some very important aspects of human rights

Reference 27 - 0.01% Coverage

The Commission realized in listening to evidence of witnesses, during the Public Hearings, from various communities, especially in the Niger-Delta and in other parts of Nigeria, that there were many other communities, which had experienced and are still experiencing gross human rights violations and immiseration similar to, or worse than those experienced by the Ogonis.

Reference 28 - 0.02% Coverage

During our Public Hearings, almost all petitioners claimed some form of compensation and/or reparation. What is more, we need to underscore the fact that no matter how we may try, there can be no adequate compensation for life, but there is consolation when those in power or the perpetrators at least acknowledge the truth of the loss and sufferings of victims and their families. In Chile for example, the President, Patricio Aylwin apologized to Chilean people over the violation of his people's rights. Also Pope John Paul apologized for the excesses of the Catholic Church during the Crusades. Following this, we recommend that all the Presidents between 1966 and 1999 should apologize for all the human rights violations that took place during their tenures. Failing this, the President should apologize on behalf of his fellow former Heads of State.

Reference 29 - 0.01% Coverage

i. To find out the root causes of human rights violations in Nigeria with special emphasis on gross human rights violations committed during the period covered by our mandate. ii. To identify the persons, authorities, institutions or organizations which may be held accountable and to also determine their motives. iii. To determine whether the state embarked on these as a state policy or whether its agents were merely overzealous.

Reference 30 - 0.01% Coverage

To be faithful to our Terms of Reference in making our recommendations, we are conscious of the fact that certain persons and institutions would have to be CLEARLY IDENTIFIED AS BEING DIRECTLY OR INDIRECTLY ACCOUNTABLE FOR CERTAIN ASPECTS OF HUMAN RIGHTS VIOLATIONS IN THE COUNTRY.

Reference 31 - 0.01% Coverage

However, in reviewing the material that was submitted to us both by our researchers and by the petitioners, we have come to the following conclusions, regarding the agents and institutions responsible for gross human rights violations in Nigeria.

Reference 32 - 0.01% Coverage

We shall briefly identify them and try to show how certain State policies have enabled certain institutions and individuals to engage in human rights violations.

Reference 33 - 0.01% Coverage

In so doing, the Commission found it necessary to go back to its Terms of Reference which demanded that it should try to establish not only what happened but also the nature of the circumstances that made human rights violations possible in the country.

Reference 34 - 0.01% Coverage

It is plausible to argue that that in its heydays, military rule was indeed propelled by patriotism and the need to set Nigeria on a sound footing. Tragically, we all now know that things have worked differently. Military rule has left, in its wake, a sad legacy of human rights violations, stunted national growth, a corporatist and static state, increased corruption, destroying its own internal cohesion in the process of governing, and posing the greatest threat to democracy and national integration.

Reference 35 - 0.01% Coverage

Clearly, the military are to be held accountable for gross human rights violations in the country, during the period under review. This is exemplified by cases of torture at the Intercentre, DMI headquarters in Lagos and Jos

Reference 36 - 0.02% Coverage

Oil, one of the greatest blessings God has showered on our nation, has turned out to be a curse. Instead of providing the basis for national economic, political, scientific/technological and social growth and development, cushioning its citizens from the scourge of abject poverty, squalor and want, oil became, in the hands of the ruling elite and the political class, an instrument sounding the death-knell of such key principles of good governance as democracy, federalism, transparency, accountability and national growth. Oil was the mainstay of the economy and the junta saw any inhibition to its flow as a breach of security. Consequently, legitimate complaints/agitations against oil pollution by host communities were violently suppressed. We therefore had to pay a heavy prize in lives and human rights violations.

Reference 37 - 0.02% Coverage

about capturing power, the business class has often been unable to subordinate its interests to those of the nation. The result is that wealthy and influential Nigerians have used their resources to bankroll coup plotters. We therefore hold that they were accomplices and therefore should be held accountable for the resultant human rights violations. The politicians should imbibe democratic spirit. This is because the desperation to win at all costs propels them to use the army to resolve political problems through coups with resultant violation of human rights.

Reference 38 - 0.01% Coverage

what has come to be known as the problem of religion in Nigeria. Religious intolerance has been the main cause of communal clashes with attendant loss of lives and gross human rights violations.

Reference 39 - 0.01% Coverage

However, the religious bodies ought to have done much more than they did in the struggle against human rights violations, especially during the dark days of the late Abacha regime. On the whole, the politicization of religion has undermined religion.

Reference 40 - 0.01% Coverage

A new responsibility has now devolved on both the leadership of Christianity and Islam to respond appropriately to the challenges of nation building and to help in laying a solid foundation for a Nigeria that promotes and respects human rights under the rule of law.

Reference 41 - 0.01% Coverage

SECURITY AGENCIES AND HUMAN RIGHTS VIOLATIONS 101.

It is evident that under military rule, the security and survival of the Head of State and of his regime at all cost became an obsession. Regime security was equated to national security. Power became so personalized that the state became synonymous with the government of the day and its leader. Regime security became an excuse for the excesses of state security agencies, leading to various gross human rights violations. 102.

Reference 42 - 0.01% Coverage

As was noted in Volume Five, our findings have led us to the conclusion that security agencies will require a fundamental restructuring, so as to re-orient them to respect due process and the human rights of Nigerians, including those of suspected individuals under interrogation or investigation.

Reference 43 - 0.02% Coverage

their necessary function of upholding the fundamental human rights of the citizen.

Executive lawlessness and disregard for the rule of law became the order of the day. Although in theory, Nigerians are said to be equal before the law, in reality, this was not so. There were two laws: one for the ordinary Nigerian and the other for those in power. Those in power were perceived to be above the law. Impunity and abuse of power created conducive climate for human rights violations, as security officers operated well outside the boundaries of their powers.

MINISTRY OF JUSTICE AND HUMAN RIGHTS ABUSES 109

Reference 44 - 0.01% Coverage

The knowledge of these obligations will assist government functionaries and the generality of our people in knowing what our international and domestic obligations are with respect to human rights issues that

have been settled internationally. In this respect, the African Charter of Human and People's Rights should be popularized in the country through seminars, workshops and publications.

Reference 45 - 0.01% Coverage

CHAPTER 2 STATE POLICIES AND HUMAN RIGHTS VIOLATIONS

Reference 46 - 0.01% Coverage

But what is also evident from the structure of electoral politics in the immediate post-independence years is the emergence of the state as the prized terrain over which the major ethnic groups staked out their hegemonic claims for political power. Control of the state by an ethnic group or combination of ethnic groups, under a zero-sum approach to electoral politics, was to the exclusion of other ethnic groups. In this way, electoral politics became a matter of life-and-death affair with its resultant effect on human rights.

Reference 47 - 0.01% Coverage

There is need for us to turn our attention to the specific nature and character of the state in Nigeria that has generally turned state creation exercises into opportunities for some to engage in gross violations of the human rights of their fellow citizens.

Reference 48 - 0.03% Coverage

THE MILITARY AND HUMAN RIGHTS VIOLATIONS 32.

The data and evidence, which the Commission gathered, very indisputably show that the military is primarily responsible for the persistence of human rights violations in the country. Military rule marked the rapid descent of the country into anarchy and destruction. It created conducive environment for gross violations of human rights, in three respects.

First, military rule violated the human rights of Nigerians to live under constitutional or limited government. Secondly, military rule militarized the country, creating in the process a climate of militarized fear. In fear, citizens were forced to retreat behind the security provided by ethnocommunal and religious barriers. This militarized fear has taken its toll on the psyche of ordinary citizens in another respect: the language of the military has permeated our institutions and cultural life, through expressions that imitate military command.

Reference 49 - 0.01% Coverage

The pernicious impact of decrees on the promotion and protection of human rights cannot be over-emphasized and has been discussed at length in the preceding volumes, especially Volume 2, of this report. We only need to underscore here the fact that human rights were invariably the first casualty of military rule. Not only does military rule, by definition, truncate the human rights of Nigerians to constitutional government under liberal democracy, as enshrined in the constitution, it also disempowers

Reference 50 - 0.01% Coverage

The Commission has identified the implementation of certain public policies, like the Structural Adjustment Programme (SAP), by military regimes as being contributory to the violations of human rights.

The reactions of Nigerians to SAP led to what came to be known in Nigeria as the SAP riots. These demonstrations took place within and outside university campuses and some students and workers lost their lives in the process.

Reference 51 - 0.01% Coverage

THE POLICE AND HUMAN RIGHTS VIOLATIONS 50.

Reference 52 - 0.01% Coverage

From the data and evidence gathered by our field researchers and from submissions we received from the public, Nigerians see the Police not as a friend but as offenders and agents of human rights violations in the country.

Reference 53 - 0.01% Coverage

They are the ones that Nigerians seeking justice through the courts have to go through. Here, they are considered the principal means of obstructing justice. They do this through bribe taking, intimidation, harassment and outright violence. In a majority of the petitions that came before us involving assassinations, murders, disappearances, etc, the police were presented as accomplices and seen as part of the conspiracy against justice and the protection of human rights.

Reference 54 - 0.04% Coverage

First, there were cases of victims of human rights violations in the hands of the police often ending up as the accused. Secondly, there were reports of the policemen and policewomen sometimes destroying evidence, losing it outright, or distorting it against the petitioner. The objective in such cases is to instill fear and deny the victims the chance to follow up their case against the police. Thirdly, we had cases of people who died in doubtful circumstances in police custody, or physically abused and injured, or victims of intimidation, unable to get justice because the police was clever in protecting some of its officers involved in such gross human rights violations. Fourthly, we discovered that the Nigeria Police was good in making police officers who were alleged to be perpetrators disappear from the area by way of very quick transfers. Thus, if a police man/woman infringed the rights of a citizen in Port Harcourt and was being sought out, such an officer would be transferred to a place as remote as Potiskum, Jalingo, or Katsina or some little corner of the country. Fifthly, we also discovered that in many instances, when the Governor of a State, a person of influence, a retired senior security personnel has interest in a case, it was not difficult for the police to hatch out a plan with the Office of the Attorney-General or the Director of Public Prosecutions to frustrate the case of the victim. We found some concrete examples with the Nigeria Police in Bayelsa State, Kaduna State, and Kano State, among others.

Reference 55 - 0.01% Coverage

There are as many stories as there are victims of human rights violations. We are aware of the fact that the inability of the police force to play its role is connected with the overbearing attitude of the military. With the capacity of the police to bear arms less visible and less threatening, soldiers never trusted the police with the ability to contain civil unrest.

Reference 56 - 0.01% Coverage

So, like the military, the Nigeria Police stands accused as a perpetrator of human rights violations. Although we are aware of the fact that there are many innocent and hard working policemen and policewomen in its fold, the Nigeria Police knows that it suffers a very serious image problem in the country.

Reference 57 - 0.01% Coverage

Finally, we are of the view that the following factors have created a favourable climate for human rights violations by the police to occur: - Poor service conditions: - Lack of working tools - Poor training - Low morale under the military - Lack of trust by the citizens. - Lack of internal discipline. - Lack of control and monitoring of weapons among the policemen and women.

Reference 58 - 0.01% Coverage

THE SECURITY AGENCIES AND HUMAN RIGHTS VIOLATIONS 63.

Reference 59 - 0.01% Coverage

The evidence before the Commission makes it clear that security agencies were identified as major agents of human rights violations. One of the strategies that the Commission employed to elicit information in this regard was the call for memoranda from civil society groups and the security agencies, among others.

Reference 60 - 0.01% Coverage

We also discovered, from the evidence gathered through research and petitions, that the Directorate of Military Intelligence (DMI) was mentioned as a gross violator of human rights.

Reference 61 - 0.01% Coverage

The Government of the late General Sani Abacha is singularly accountable for the human rights violations during this period.

Reference 62 - 0.01% Coverage

From the evidence before us, the Commission is of the opinion that there is an urgent need to seriously overhaul most of the security agencies and also re-orientate their staff towards imbibing and respecting the human rights of Nigerians the values of democracy.

Reference 63 - 0.01% Coverage

PUBLIC BUREAUCRACY AND HUMAN RIGHTS VIOLATIONS 77.

We received over 600 memoranda from civil servants alleging that the federal government and state governments had violated their right to work. From the private sector, we also received memoranda from employees, alleging violations of human rights through what the petitioners described as "wrongful dismissals" and termination of employment, without due process.

Reference 64 - 0.01% Coverage

received. We identify those that amounted to gross human rights violations. The Commission thereafter decided to conduct public hearings only in respect of the cases alleging gross human rights violation.

Reference 65 - 0.01% Coverage

We have under our mandate to make recommendations "to redress injuries of the past and prevent or forestall future violations of human rights" i.e. to say what happened in the past should never happen again. To ensure that this does not happen again is the responsibility of every Nigerian. Our recommendations below constitute some of then strategies to ensure that what happened in the past will not happen again.

Reference 66 - 0.01% Coverage

following: Human Rights issues, Basis for Representation; Resource Generation; Infrastructure; Taxation; Participatory democracy; Identity (religion, ethnic, communal); Constitutional Rights; Policing; Crime Prevention etc).

Reference 67 - 0.01% Coverage

HUMAN RIGHTS AND CIVIC/MORAL EDUCATION IN SCHOOLS 20.

Reference 68 - 0.03% Coverage

It was clear to us that respect for Human Rights is very much a new concept in recent African political and social discourse. We have noted that many of the hierarchy of the security agencies did not see any thing wrong in the application of torture and kindred inhuman tactics to extract information during interrogation. We also noted that even for many victims, the idea of what constituted human rights violations was not very clear. We therefore recommend that human rights education become fully integrated into the curricula of the military, police and other security personnel in the country. The Law Faculties in our Universities should set up Departments for the inter-disciplinary study of Human Rights Law as a matter of urgency. It is our view that as more and more of our citizens become aware of their rights, the issue of violations will be minimized greatly. The fatherhood of God necessarily implies the brotherhood of all Nigerians. We as a sovereign nation under God, are resolved, "to live in unity and harmony as one, indivisible and indissoluble sovereign nation under God."

Reference 69 - 0.01% Coverage

We recommend a programme of civic and human rights education in the military formations across the country.

We also recommend that the military review its methods of internal discipline, especially in relation to detentions in the guardrooms, courtmartial and other methods of justice that violate human rights. Proceedings in gaurdrooms and court-martial should conform with the African Charter, especially relating to torture.

Reference 70 - 0.01% Coverage

the law, civic education and human rights. *

Reference 71 - 0.01% Coverage

to ensure that the trials conform to human rights norms. THE JUDICIARY 37.

Reference 72 - 0.01% Coverage

We recommend that the Federal Ministry of Justice and the National Human Rights Commission (NHRC) take very seriously the publication of readable summaries of citizenship rights and obligations in the country. The idea is to provide Nigerians with a guidebook on their citizenship rights and obligations.

Reference 73 - 0.01% Coverage

The Commission is of the view that no Commission or any constitution, for that matter, can put an end to human rights violations. Security agencies and law enforcement agencies will continue to breach the law. What is more, there will always be individuals within the system who will go beyond the call of duty.

Reference 74 - 0.01% Coverage

Commission refers to as a Popular Version of both the relevant Human Rights provisions in our Constitution and the relevant sections of this Report. The idea is to put into the hands of the mass of our people, a document that can be the human rights version of the human rights Highway Code or of a Catechism, with a Question and Answer format. This should be a document that should be within the reach of every ordinary, literate citizen. It should be produced at very subsidized rate, in collaboration with the National Human Rights Commission.

Reference 75 - 0.02% Coverage

In view of the importance that the international community has now placed on Human Rights, we are of the view that the Office of Minister for Human Rights should be created. There should be no conflict with the Office of the Attorney-General. In fact, the person chosen or appointed to the office need not have a legal background. This office is essentially to serve as a whistle blower, while also seeking to coordinate and harmonize the work of the Human Rights Commission, Public Complaints Commission, Code of Conduct Bureau and the Federal Character Commission. It should offer citizens another outlet to turn to for redress. To insulate it from the public bureaucracy, the Office should be independently funded with assistance from international agencies, corporate bodies and the United Nations.

Reference 76 - 0.02% Coverage

We propose the immediate setting up of a Human Rights Violations Rehabilitation Fund. This Fund is imperative as a foundational building block for national reconciliation. We are also of the view that this fund need not be solely a federal government venture. Afterall, during the heydays of apartheid, when Nigeria was in the forefront of the battle against the evil of apartheid, the government encouraged citizens of Nigeria to contribute to the South African Relief Fund. The response was very encouraging. We are of the view that the victims of human rights violations be treated the same way victims of other man-made disasters are treated, whether they are wars or of natural disasters like earthquakes.

Reference 77 - 0.01% Coverage

We recommend a National Human Rights Day to draw public attention to the issues of human rights violations. We suggest June 14, the date of the inauguration of the Commission as that date. If this recommendation is accepted, then the relevant agencies will work towards ensuring that a series of events are prepared around this date.

Reference 78 - 0.01% Coverage

The above community presented a petition titled, Human Rights Violation by the Liama and Egwema on the total annihilation of the Beletiemba/Egbabeleu Community of Brass Local Government Area of Bayelsa State on 18th July, 1997 and April 9th 1999 respectively. The petition was signed on behalf of the Community by Chiefs M. E Dakolo Apiri, Lyton Owoidoi, Itari Collar Ikpikpi, Temple Ombu, Isaiah Bou and Alexander O. Diye.

Reference 79 - 0.01% Coverage

This petition, titled, Kafanchan Crisis and Human Rights Abuses sought to draw attention to the needs of those who call themselves the Indigenous People of Kafanchan. Essentially, they, like the Ninzam community were also demanding a chieftdom of their own. Again, like the Ninzam, this request has been granted by the Government of Kaduna state. In fact, the Community did not show up when their petition was called in Kano and they later informed the Commission that they felt that their petition had been overtaken by developments in Kaduna State.

Reference 80 - 0.01% Coverage

This community submitted a petition titled, Human Rights Abuses meted out on the Nwaniba people by Ifiaiyong Usuk People with the support of Akwa Ibom State Police Command.

Reference 81 - 0.01% Coverage

After reviewing the petition from the Umuode Community, we have come to the conclusion that the issues of human rights violations are indeed not the prerogative of governments and their agencies. Individuals, communities and organizations are sometimes worse culprits. The Umuode Community case clearly demonstrates the cruel cultural practices that are

Reference 82 - 0.01% Coverage

capable of bringing government efforts at securing human rights for its citizens to naught. Clearly, the predicament of this community is based on the false belief by the neighbouring community that the people of Umuode fall within a category of subhuman beings known as Uhu. Elsewhere in Igboland, this invidious cultural practice classifies the same groups as Osu. We condemn this philosophy in its entirety and call on the Federal Government to ban this assault on human dignity.

Reference 83 - 0.04% Coverage

The Commission reviewed the evidence submitted before it and concluded that there was really only one central question which was: Do proceedings before a Commission of Inquiry constitute a suit at law or a judicial proceeding? In its wisdom, the Commission came to the conclusion that: In a Commission of

Inquiry under the Act, there does not exist an adversary situation. There is no litigation, and as such, there are no parties properly so called. No judgment is entered or can be even entered for or against the parties that do not in law exist. Everyone who appears before the Commission appears as a witness whose evidence will enable the Commission gather all the facts and make recommendations to the Proper Authority contemplated in Section 14 of the Act.... From our Terms of Reference, every President or ex-President, every top government functionary from January 15th, 1966 to May 28th 1999 is a relevant and necessary witness, whether or not he is specifically mentioned or implicated in any petition before the Commission. It is therefore no defence for failure to attend to say that any particular official was not mentioned in any particular petition. It is also erroneous to suggest that questions ought to be limited to the averments in a particular petition... That being so, every Head of State during those dark military years will be held accountable. He has to give account to the people of Nigeria, give account of his stewardship in respect of all gross human rights violations committed during his period of office. He is also accountable to history.

Reference 84 - 0.01% Coverage

Human Rights Education should be integrated into the curricula of our schools, with an urgent return to civic and moral education from nursery through secondary schools.

Reference 85 - 0.01% Coverage

The Federal Ministry of Justice, in collaboration with the National Human Rights Commission, should publish readable summaries of citizenship rights and obligations in the country.

Reference 86 - 0.02% Coverage

Arising from these cases are the arraignment of General Ishaya Bamaïyi and others before various High Courts in Lagos. The petitions from alleged victims about the alleged violations of their human rights by the aforementioned persons (General Bamaïyi and others) were dealt with in Volumes Four and Six of this Report. However, while we affirm that matters pending before our courts should take their normal course, we advise that, in the spirit of forgiveness, reconciliation, unity and peaceful co-existence, which the Commission has belaboured in this Report, the President may wish to consider a political solution as an alternative to the on-going protracted judicial process or else accelerate the hearing of these cases.

Reference 87 - 0.01% Coverage

22. 23. 24. The Office of Ombudsman for Prisons Welfare should be created. The Office of the Minister for Human Rights should be created. A Human Rights Violations Rehabilitation/Presidential Fund should

Reference 88 - 0.01% Coverage

21. A National Human Rights Day should be proclaimed and celebrated

Reference 89 - 0.01% Coverage

multi-nationals, Non-Governmental Organisations and International Organisations be invited to contribute to such a fund. We further recommend that the funds are to be managed by the National Human Rights Commission or any other body to be appointed by the government.

Reference 90 - 0.03% Coverage

legal advice to the Police and appropriate steps be taken to discipline erring State Counsel who, rather than give legal advice, turn themselves into courts and "decide" cases submitted merely for advice. In the Bayelsa case involving Dr. Eneweri, the Counsel was forced to recommend that those on board the outboard engine where Dr. Eneweri were supposed to have been drowned, be charged with the offence of murder. And that the State Counsel that proffered the advice be joined as an accessory after the fact. The Commission is sorry to say that in other jurisdictions we found the same practice still going on. We, however, did find in one or two jurisdictions such as the Rivers State when Mr. Adokie Amasiemeka was DPP, a correct advice being given and the Commission commended him for that. i. As Chief Law Officers, Attorneys-General should appreciate the responsibility imposed on them by their high offices while rendering advice to the government especially on issues bordering on life and death. If such advice is rejected, he/she should have the courage to resign. We make this recommendation because the atrocities and human rights violations which occurred during the period under review would not have happened if the Attorneys-General lived up to expectation.

Reference 91 - 0.03% Coverage

The Nigerian scene from 1966 to 1999 has been very daunting indeed with many things falling apart including national unity, national loyalty, allegiance and patriotism. Of course, there has to exist a patrios; - fatherland; before one can talk about patriotism. The President wants Nigerians to see themselves as Nigerians and to put the interest of Nigeria over and above those of tribes or tongues. All the negative forces of Fear of Domination, Tribalism, Ethnicity, Son of the Soil versus Stranger Element Syndrome - all these should give way to "a new dawn of a People United; under one Flag, and bound together by common aspirations of liberty, freedom, justice and peace." "A New Age of One Nation, One People, One Destiny" with the Culture of Unity in Diversity and of Brotherhood based on one Common Nigerian Citizenship and respect for the human rights of every Nigerian. It is in such a New Nigeria that any Recommendation of this Commission can achieve its purpose of healing and reconciliation, otherwise it will simply be pouring new wine into old bottles.

Reference 92 - 0.01% Coverage

deserted villages". In a sense, this Report is also a lament. However, unlike Oliver Goldsmith's *The Deserted Village*, this particular lament is a lament, not about the disappearance of village life but about the aftermath of military rule in Nigeria and the consequential disappearance and violations of the human rights and essential freedoms of Nigerians. Like Oliver Goldsmith, I can then say: Ill fares the land, to hast'ning ill a prey, Where might tramples over right, And essential freedoms Decay.

Reference 93 - 0.01% Coverage

our society. Public and private morality reached its nadir; and the casualties included human dignity, human rights and our basic freedoms. We also experienced institutional and structural decay.

Reference 94 - 0.01% Coverage

extent of our moral, physical and institutional decay under military rule. The proscription and circumscription of our human rights and freedoms under military rule were symptomatic of a much

serious malaise, the departure from constitutional or limited government and with it the absence of accountability and transparency in public life. This was the ultimate decay involving the personalization of the governmental process around the military ruler.

Reference 95 - 0.01% Coverage

Special Sessions, held across the various geo-political zones of the country, for alleged victims and alleged perpetrators of human rights abuses and violations to bare their minds in public. But we were careful not to take their accounts at their face value. We had to devise means of corroborating them.

Reference 96 - 0.01% Coverage

problematic. For example, during our public hearings in Abuja, Lagos and Port Harcourt, alleged perpetrators of human rights abuses and violations blatantly denied the human rights abuses and violations alleged against them by their victims and families.

Reference 97 - 0.01% Coverage

as is clear from our comparative analyses of the work of truth commissions in Argentina, Chile, Guatemala, South Africa and Uganda in Volume 2 and Volume 5 of this Report, any society that has gone through the trauma of unbridled human rights violations and abuses is invariably confronted with a choice among two options: (a) Revenge and/or Nuremberg-type trials; and (b) Forgiveness and Reconciliation.

Reference 98 - 0.01% Coverage

commission is set up to accomplish. Indeed, of the five truth commissions referred to above and analyzed in Volume 2 and Volume 5 of this Report, it was only in the case of Argentina that there were criminal prosecutions of members of the military junta and their collaborators for gross human rights abuses. In the other four cases, Chile, Guatemala, South Africa and Uganda, the aim was for people to know what happened in their respective countries during the dark days of military rule.

Reference 99 - 0.01% Coverage

"The Peace Accord signed by the warring factions in Ogoniland...will go down in the sociopolitical development of this country as one of the landmark achievements of the Human Rights Violations Investigation Commission."

Reference 100 - 0.01% Coverage

marginalization in this Foreword other than to observe that they are central to the consideration of human rights as group, ethno-cultural, ethno-religious or collective rights as well as to the foundations of federalism in the country, going as far back as the mid-1940s and the fears of domination expressed by minority ethnic groups in the penultimate years of the decolonization process in our country.

Reference 101 - 0.01% Coverage

our national experience with federalism shows that the problem of marginalization is at the bottom of minority ethnic group fears of the curtailment or violation of substantive human rights—the right to

selfdetermination, the right to the promotion of their cultural rights, and their citizenship rights, especially the right to equitable participation in the cultural, economic and political life of the country.

Reference 102 - 0.01% Coverage

of our Commission is the raising of the issue of minority rights as a core dimension of gross human rights violations and bringing it on the agenda of national debate. In this way, such public consciousness may engender well-thought out remedial public policies and constitutional guarantee of minority rights, thereby facilitating national reconciliation.

Reference 103 - 0.01% Coverage

were unable to draw this distinction between themselves and the State. Their intelligence outfits danced to their tune and their agents also saw themselves as beyond and above the law. This led to the hounding of journalists and those who criticized their administrations and policies. Intellectuals and human rights activists, among other critics of military rule, were arrested and jailed, without recourse to due process, in the so-called interest of State security.

Reference 104 - 0.01% Coverage

military rule in the country, as elsewhere. The fall-out, in our case, was the gross violations of the human rights of Nigerians, which are enumerated and elaborated upon in this Report, particularly in Volumes Two, Four, Five and Six.

Reference 105 - 0.01% Coverage

governmental organizations that worked closely with us, providing useful insights into the nature of human rights abuses in the country.

Reference 106 - 0.01% Coverage

the establishment of the Commission, initially as The Human Rights Investigation Panel but later as The Judicial Commission for the Investigation of Human Rights Violations (in Nigeria).

Reference 107 - 0.01% Coverage

Nigeria's political and constitutional history, lies in the fact that, against the background of historically deep-rooted contradictions generated by the dialectics of conflict and cooperation among the various peoples and social movements in the country, dating back to pre-colonial times, its establishment was an attempt to lay the groundwork for an enduring and sustainable peace and development in the country, founded on the concepts and principles of human rights, equality, justice and reconciliation.

Reference 108 - 0.01% Coverage

necessary to go beyond the more immediate reason for the establishment of the Commission, which is primarily to investigate various dimensions of cases of gross human rights violations in the country between 15 January 1966 and 28 May 1999 in order to determine their nature and extent, and their perpetrators and the victims.

Reference 109 - 0.01% Coverage

seek the root causes of human rights violations and abuses in the country in more historically deep-rooted cultural, political and socioeconomic sources than the country's recent or postcolonial political and constitutional history would unravel. This is why it is important to distinguish between the remote or predisposing causes and the immediate or precipitating causes of human rights violations or abuses in the country, and, therefore, of the reasons for the establishment of the Commission.

Reference 110 - 0.02% Coverage

(petitions etc) submitted to the Commission show, while there were indications of cooperation and integration among the various peoples and communities in pre-colonial and colonial Nigeria, as well as political institutions that set premium on accountability, participation and responsibility in governance, there were also cultural and political norms, practices and institutions as well as economic institutions which entailed human rights violations and abuses, aggravating and deepening latent animosities and conflicts between the various communities and alienating individuals from the political system.

Reference 111 - 0.01% Coverage

exploitative, was founded as much on an underlying policy of divide and rule, which created fissures and encouraged animosities and unhealthy rivalry among the various communities in the country, as on a policy of arbitrary rule which, by its inherent nature, substantially and substantively denied the human rights, particularly the civil, economic and political rights, of Nigerians.

Reference 112 - 0.01% Coverage

Commission must be seen in the broader historical compass of social forces and cultural and political practices that run historically deep in the social fabric of the country, providing an underlying stream from which flowed current practices that continue to pose a threat to good governance and sustainable development in the country and to the promotion and protection of the fundamental human rights of Nigerians.

Reference 113 - 0.01% Coverage

manifestation of human rights abuses and violations in the country. 2.16

Reference 114 - 0.01% Coverage

2.17 The incidence of human rights abuses and intimidation

Reference 115 - 0.01% Coverage

represented the high watermark in the arbitrariness and human rights violations that characterized military rule during this period.

Reference 116 - 0.01% Coverage

2.20 If military rule was arbitrary, involving gross human rights

Reference 117 - 0.01% Coverage

immediate origin of the Commission is to be sought, for the democratic struggle kept the issue of arbitrary rule and state-sponsored violence, exemplified in many cases by gross violations and abuses of human rights, on the agenda of political discourse in the country and as a recurring and festering problematic aspect of military rule that must be confronted and for which, it is demanded, the military leadership and culpable state functionaries must ultimately be held accountable.

Reference 118 - 0.02% Coverage

to favour particular ethnic groups and to disempower other ethnic groups; the annulment of the June 12, 1993 presidential elections; the use of political assassinations, torture and judicial murder as allegedly deliberate instruments of state policy to eliminate and harass regime opponents and pro-democracy activists; the democratic struggle against military rule in the country; the need to confront the past in order to build the future on a durable, non-vengeful basis; and trends and developments in international society which, while prescriptively universalizing human rights, also criminalize their gross violations, making rulers and perpetrators of such violations accountable to international society.

Reference 119 - 0.01% Coverage

Initially titled The Human Rights Investigation Panel, the establishment and composition of the re-named panel as The Judicial Commission of Inquiry for the Investigation of Human Rights Violations (in Nigeria),

Reference 120 - 0.01% Coverage

"(a) ascertain or establish the causes, nature and extent of all gross violations of human rights committed in Nigeria between the 15th day of January 1966 and the 28th day of May 1999;

Reference 121 - 0.01% Coverage

identify the person or persons, authorities, institutions or organisations which may be held accountable for such gross violations of human rights and determine the motives for the violations or abuses, the victims and circumstances thereof and the effect on such victims and the society generally of the atrocities;

Reference 122 - 0.01% Coverage

recommend measures which may be taken whether judicial, administrative, legislative or institutional to redress injustices of the past and prevent or forestall future violations or abuses of human rights;

Reference 123 - 0.01% Coverage

Judicial Commission of Inquiry for the Investigation of Human Rights Violations. It also contained amendments to the initial Terms of Reference of the panel. The amendment was at the instance of the

Panel, which had asked the President to consider upgrading the Panel into a Human Rights Abuses and Reconciliation Commission, with powers to command and enforce the attendance of witnesses.

Reference 124 - 0.01% Coverage

the reference in terms of reference (a) and (b) in the amended instrument to "gross violations of human rights..." as opposed to the more specific reference to "...all known or suspected cases of mysterious deaths and assassinations or attempted assassinations..." in terms of reference (i) and (ii) in the original terms of reference;

Reference 125 - 0.01% Coverage

fact-finding one, namely to investigate the causes, nature and extent of gross violations of human rights in the country between 15th January, 1966 and 28th May 1999, to determine the persons, authorities and institutions to be held culpable of such violations and their motives in doing so, as well as the effect of such violations on their victims, and to determine whether such violations were part of deliberate State policy or the policy of any of its organs.

Reference 126 - 0.03% Coverage

human rights violations, when he referred to the need not only "...to make reparations where possible..." but also "...for forgiveness of offenders in the overall interest of the future of this great country."
(b) The Chairman's Opening Remarks, in relating the terms of reference of the Panel/Commission to the Constitution of the Federal Republic of Nigeria, also underlined the universal dimensions of the mandate of the Panel/Commission. This was evident in his reference to the relevance of such international documents as the United Nations Universal Declaration of Human Rights and the OAU African Charter on Human and Peoples' Rights, to which Nigeria has subscribed, and of the work of the South Africa's Truth and Reconciliation Commission to the Panel's/Commission's assignment.
(c) The Chairman related the concept of [human] rights to kindred and contested philosophical concepts like justice, equality, fairness, democracy and freedom in the broader context

Reference 127 - 0.01% Coverage

"Human Rights Abuses and Reconciliation Commission [which] will allow for genuine confessions of guilt; and for forgiveness of offenders in the overall interest of the future of this great country."

Reference 128 - 0.01% Coverage

African experience, was that, in appearing before the Commission, alleged perpetrators and alleged victims of gross human rights abuses would both have the opportunity to "unburden their hearts," and that their testimonies would expectedly have a psychologically therapeutic and re-integrative impact (in an individualistic as well as a collective sense) not only on them but also on the nation, thereby facilitating the national healing and reconciliation process, by allowing "the truth" to be told and disclosed in public.

Reference 129 - 0.01% Coverage

2.53 The promotion and protection of human rights becomes a

Reference 130 - 0.01% Coverage

concepts around which the mandate as well as the work of the Commission is best understood, namely human rights,

Reference 131 - 0.01% Coverage

meaning of the concept of human rights and its relevance to the mandate and work of the Commission.

Reference 132 - 0.01% Coverage

HUMAN RIGHTS 2.60

The intellectual development of the notion of human rights

Reference 133 - 0.01% Coverage

2.61 The legal and political framework of human rights derives,

Reference 134 - 0.01% Coverage

2.62 Human Rights, then, as postulated in this language of

Reference 135 - 0.03% Coverage

establishment of the United Nations, as successor to the League of Nations, that human rights as a new type of rights, came into use to denote fundamental rights which are universal rights, to which all peoples, human being as such, are entitled by virtue of their humanity.

2.65 This concept of human rights has been variously elaborated, expanded and incorporated into national legal systems and constitutions by international agreements, which, among others, include the United Nations Universal Declaration of Human Rights, the United Nations Charter, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Optional Protocol, the European Convention on Human Rights, the African Charter of Human and Peoples' Rights, the Arab Charter on Human Rights, and the various United Nations conventions and treaties on Racial Discrimination, Torture, the Rights of the Child, Discrimination Against Women, and the Rights of Migrant Workers.

Reference 136 - 0.01% Coverage

respect to the mandate of the Commission "to address all issues that tend to bring our country into dispute, or perpetuate injustice, conflict and the violation of human rights."

Reference 137 - 0.02% Coverage

and protection of human rights by the international community has made it practically difficult for states and regimes to claim a domaine reserve, which excludes the investigation of their domestic human rights practices and violations by the international community. Governments and political leaders are now accountable to the international community as well as to their own citizens for gross violations of human

rights and crimes against humanity like war crimes, genocide, ethnic cleansing and the deliberate starvation of segments of a country's population for political ends.

2.69 Thirdly, human rights are now construed flexibly not

Reference 138 - 0.01% Coverage

WHAT ARE GROSS VIOLATIONS OF HUMAN RIGHTS? GENERAL 2.70

Reference 139 - 0.01% Coverage

violations of human rights committed in Nigeria between the 15th day of January 1966 and the 28th May 1999."

2.71 The term 'gross violations of human rights' is neither

Reference 140 - 0.01% Coverage

decided to categorize as possibly falling under gross violations of human rights the following cases: (a) murder/assassination cases; (b) severe physical/mental torture cases; and (c) cases of sustained or continued denial of the rights of ethno-communal groups people, like the Ogonis.

2.73 These various cases involve claims to the three basic human rights to life, to personal liberty and to human dignity.

WHAT ARE GROSS VIOLATIONS OF HUMAN RIGHTS? NATURE OF PETITIONS RECEIVED 2.74

Reference 141 - 0.01% Coverage

and other forms of degrading treatment, such as prolonged detention without trial, which derogate from the basic rights to life, personal liberty and human dignity, are accepted as "gross violations of human rights," after being subjected to the "gross" or "extent" test.

Reference 142 - 0.01% Coverage

prima facie victim of the manipulation and abuse of the judicial process, which process is allegedly the tool of the gross violations of his human rights.

Reference 143 - 0.01% Coverage

WHAT ARE GROSS VIOLATIONS OF HUMAN RIGHTS? THE SOUTH AFRICAN FORMULATION 2.82

Reference 144 - 0.01% Coverage

WHAT ARE GROSS VIOLATIONS OF HUMAN RIGHTS? MUNICIPAL AND INTERNATIONAL LAW

Reference 145 - 0.02% Coverage

controversial or "sticky" points in our immediate past that need to be confronted. Although many of these "sticky" points became prominent during the military administration of General Abacha, it was our belief that military rule by its very nature, had its own inner logic, with injustice, arbitrariness and human rights violations its hallmark. To address this problem, we commissioned researchers to look into it and to

provide us with as much research-based data as possible. In this way, we were able to look at such vexed issues as the Abandoned Properties issue, the Niger-Delta conflict area and the Ogoni case.

Reference 146 - 0.01% Coverage

causes of gross human rights violations; (b) the nature of the violations; (c) the extent of the violations; (d) the identity of the person or persons, authorities and the organizations that are accountable and responsible for the violations; (e) the motives for the violations; (f) the motives for the violations; and (g) the circumstances of the violations.

Reference 147 - 0.01% Coverage

chapter, decided to commission research into the country's history of human rights violations before and during the period covered by the Commission's mandate.

Reference 148 - 0.01% Coverage

causes and nature of human rights abuse and violations in the research reports would provide a rich vein of background information and data, which would enable the Commission to contextualize and

Reference 149 - 0.01% Coverage

categorize the history and pattern of human rights violations in the country.

Reference 150 - 0.01% Coverage

national newspapers in June 1999, inviting the submission of memoranda on complaints of human rights violations during its mandate period. Thereafter, the Commission continued to advertise its activities, especially its public hearings and the cases slated for the hearings, in the print and electronic media and through press releases.

Reference 151 - 0.01% Coverage

political and social history of Nigeria, since the amalgamation of northern and southern Nigeria in 1914. In doing so, we hope to highlight a number of salient and recurring issues, trends and perspectives which provide the broader historical canvass for contextualizing and understanding recent political developments, including gross violations of human rights in the country.

Reference 152 - 0.01% Coverage

advantage. Out of these economic networks emerged cultural and political networks and the economic, political and socio-cultural institutions they spawned, which, though not without contradictions, as in wars and raids among the various peoples and communities in pre-colonial Nigeria, and their attendant violations of human rights had the long run potential of being integrative.

Reference 153 - 0.01% Coverage

through since colonial rule, especially the sometimes bloody and murderous forms which competition and conflict among the various peoples and communities assumed, resulting in gross violations of human rights, were shaped by the internal logic and the further elaboration and development of this trading post economy.

Reference 154 - 0.03% Coverage

kingdom of Kanem-Borno, with a known history of more than a thousand years; the Sokoto Caliphate, which for nearly a hundred years before its conquest by Britain had ruled most of the savannah of northern Nigeria; the kingdoms of Ife and Benin, whose works of art had become recognized as amongst the most accomplished in the world; the Yoruba Empire of Oyo, which had once been the most powerful of the states of the Guinea Coast; and the city states of the Niger Delta, which had grown partly in response to European demands for slaves and later palm-oil; and the largely politically decentralized and acephalous political systems of the Igbo-speaking peoples of southeastern Nigeria. We wish to emphasize the point made earlier that these kingdoms and the political structures and the sociocultural and legal institutions that sustained them had their own internal contradictions, had undemocratic features and, from the perspective of modern concern with human rights, institutionalized practices and customary laws, some of which are still subsisting, that fundamentally derogated from human rights.

Reference 155 - 0.01% Coverage

colonial political structures and their supporting socio-legal institutions were flawless and unblemished by violations of human rights. Our point, rather, is that on the eve of colonial rule, the various Nigerian communities had socio-legal and political institutions based on their unique historical and cultural circumstances, reflected in their chieftaincy institutions.

Reference 156 - 0.02% Coverage

excitement and rising expectations, which were dashed as a result of the violent explosion of the uncontrollable political tinderbox of centrifugal or separatist ethnic and ethno-regional politics, resulting in political violence, ethno-communal riots and gross violations of human rights, in which the state (federal and regional) often participated as an active protagonist, the use of federal troops to quell civil unrest, in the face of the helplessness of the police force, the brazen corruption of the electoral process, myopic political leadership, political corruption, political brinkmanship and constitutional crises.

Reference 157 - 0.01% Coverage

civil war involved gross violations of human rights on both sides. 3.99

Reference 158 - 0.01% Coverage

constitutional elaboration, under the fundamental objectives and directive principles of state policy clauses, of human rights to include economic, cultural and social rights, in addition to the customary civil and political rights. The ban on partisan politics, in place since January 15

Reference 159 - 0.01% Coverage

29 May 1999, bringing to an end over 15 years of uninterrupted military rule in the country from 31 December 1983 to 29 May 1999. RESIDUAL POLITICAL ISSUES: HUMAN RIGHTS & MINORITY ETHNIC GROUPS

Reference 160 - 0.01% Coverage

unfair, will reward mediocrity and are inconsistent with the entrenched fundamental human rights provisions of Nigerian constitutions. They also argue that a person's worth and the respect due to him/her as a person should not be defined in terms of his/her ethnic origins.

Reference 161 - 0.01% Coverage

violence and anomic political behaviour in the Niger-Delta area, expressed in: (a) separatist agitation and popular democratic struggles against state violence and the violations of the human rights of the peoples of the Niger-Delta by functionaries and agents of federal and state governments and the oil companies;

Reference 162 - 0.01% Coverage

Chapter 2 describes the impact of human rights violations in the country by previous regimes on the country's image abroad and in its international relations with other countries during the period covered by this report.

Reference 163 - 0.01% Coverage

In chapter 3 we examine Nigeria's compliance with international human rights standards during the same period, that is, between January 15, 1966 and May 28, 1999.

Reference 164 - 0.01% Coverage

Chapter 5 discusses Nigeria's domestic and international legal obligations to investigate human rights violations.

In chapter 6, we identify specific obstacles that have prevented the Nigerian state from fulfilling its legal obligations to promote human rights and to prevent their violations.

Reference 165 - 0.01% Coverage

In the final chapter of the volume, chapter 7, we provide an overview of comparative regional experiences with the establishment of commissions with similar terms of reference and mandate as our own Human Rights Violations Investigation Commission. In this respect, our focus is on the process of institutionalizing such commissions, their role in promoting national reconciliation, how they approached the vexed question of granting immunity to past or serving heads of state, and what lessons Nigeria can or should learn from these regional experiences.

Reference 166 - 0.01% Coverage

Because of the international stature of the country, other countries and international organizations continue to show keen interest in her domestic politics and economic policies, including the protection and promotion of human rights.

Reference 167 - 0.01% Coverage

CONSTITUTIONAL PROVISIONS FOR HUMAN RIGHTS 2.6

In the area of human rights, the country's Independence Constitution of 1960 entrenched a bill of primarily civil and political rights. Although they applied to all Nigerians as individuals, as such, the rights were intended to guarantee minority ethnic rights and, therefore, not only to assuage their fears of discrimination but also to take the steam out of their demand for the creation of more states in the country before independence.

Reference 168 - 0.01% Coverage

However, the conflict between rights, defined as individual rights belonging to the person as such, and rights as collective ethnic group rights, remains a sore point in the constitutional provisions of human rights, reflected in the tension between citizenship and indigeneship in the country.

Reference 169 - 0.02% Coverage

The first major dent in the international image of the country in the human rights area was provided by the military coup of January 15, 1966, during which the Prime Minister of the Federation of Nigeria, the Premiers of the Northern Region and the Western Region, the Federal Minister of Finance and a number of high-ranking military officers were assassinated. This was followed by the ethnic massacres of 1966 and 1967, especially of the Igbos, and the country's descent into civil war in mid-1967, with the declaration of the Republic of Biafra by dissident elements in the Igbo military and political leadership.

Reference 170 - 0.01% Coverage

Another major dent in the country's human rights record was the prosecution of the civil war, with charges and counter-charges by both sides in the war and by their supporters of the use of starvation as a weapon of war, of the deliberate killing of civilians by the federal and Biafran troops and the ill-treatment of captured soldiers, "prisoners of war," by both sides.

Reference 171 - 0.01% Coverage

Another major dent in the international human rights record of the country was the annulment of the June 12, 1993 presidential elections, won by Chief M.K. Abiola, of the Social Democratic Party (SDP), by the federal military government, under General Ibrahim Babangida.

Reference 172 - 0.01% Coverage

The unwholesomely negative international perception of the human rights situation in the country reached its nadir during the administration of the military ruler, General Sani Abacha.

Reference 173 - 0.01% Coverage

Within Africa, relations between Nigeria and South Africa became chilly, as the moral weight of President Mandela was lent to the domestic and international critics of the human rights violations committed under the Abacha regime.

Reference 174 - 0.01% Coverage

The African mood was reflected in the fact that the African Commission on Human and Peoples' Rights (ACHPR) used the occasion of its second extraordinary session to take the unusual step of condemning human rights violations in Nigeria.

Reference 175 - 0.01% Coverage

NIGERIA'S COMPLIANCE WITH INTERNATIONAL HUMAN RIGHTS STANDARDS - (JANUARY 1966-MAY 29, 2002)

NIGERIA'S RATIFICATION OF INTERNATIONAL HUMAN RIGHTS CONVENTIONS

Reference 176 - 0.01% Coverage

Among other international covenants or agreements on human rights, which it has signed and ratified are the following: the Convention on the Rights of the Child (CRC); the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); the Convention on the Elimination of Forms of Racial Discrimination (CERD); the Convention on the Prevention and Punishment of Genocide; the Slavery Convention of 1926; the Convention and the Protocol Relating to the Status of Refugees.

Reference 177 - 0.01% Coverage

In recent years, various United Nations Human Rights mechanisms, governments and Non-Governmental Organizations (NGOs), have alerted

Reference 178 - 0.01% Coverage

the UN Human Rights Commission on the deteriorating situation of human rights in Nigeria. In 1993, the UN Working Group on Arbitrary Detention adopted a decision [No.22/1993-Nigeria] stating that the detention of three prominent human rights activists, Chief Gani Fawehinmi, Dr Beko Ransome-Kuti and Femi Falana was arbitrary. The Working Group also deplored the military government's rule by emergency decrees without a formal declaration of a state of emergency in the country.

Reference 179 - 0.01% Coverage

These three human rights activists had been arbitrarily arrested and repeatedly detained for days because of their progressive activities in defence of the promotion and protection of human rights.

Reference 180 - 0.01% Coverage

3.9 Session of the Commission on Human Rights in 1995 confirmed that extra-judicial, summary and arbitrary executions and kindred gross violations of the basic right to life by agents and functionaries of the state were occurring in Nigeria. The Special Rapporteur called on the Nigerian government to take necessary steps to ensure that the security forces respect human rights and fully abide by the norms and regulations governing the use of force and to bring to justice those who violate them. 11

Reference 181 - 0.01% Coverage

The UN Human Rights Commission expressed deep concern about the human rights situation in Nigeria, following the trial and execution of Ken Saro-Wiwa and the 8 MOSOP leaders.

Reference 182 - 0.02% Coverage

condemned the arbitrary execution of Saro-Wiwa and the 8 Ogoni leaders. Expressing concern about other gross violations of human rights, the resolution called upon the Special Rapporteur on Extra-Judicial, Summary or Arbitrary Executions and the Working Group on Arbitrary Detention to investigate the human rights situation in Nigeria and to report their findings to the UN Human Rights Commission at its next session in March 1996.

The UN Human Rights Commission requested the Nigerian government to submit a report on the human rights situation in the country, with particular reference to the application, within the country, of Articles 6, 7, 9 and 14 of the ICCPR, for consideration at the Commission's 56th session in March/April 1996.

Reference 183 - 0.01% Coverage

During the discussion that followed the submission of the report by the Nigerian government, the UN Human Rights Commission noted fundamental inconsistencies between the obligations undertaken by Nigeria under the covenant to respect, promote, protect and ensure rights guaranteed under the covenant and the implementation of those rights in Nigeria.

Reference 184 - 0.01% Coverage

The Commission recommended the abrogation of all decrees, which, either establishing special tribunals or ousting normal constitutional guarantees of fundamental human rights or the jurisdiction of the normal courts, violate some of the basic rights under ICCPR.

Reference 185 - 0.01% Coverage

The Report of the Commission of Inquiry of the International Labour Organization (ILO), which visited Nigeria in August 1998, at the invitation of the Nigerian government, highlighted the profound improvement in the human rights situation in the country, since the inception of the administration of General Abdulsalami Abubakar, that took over after the sudden death of General Sani Abacha in July 1998.

Reference 186 - 0.01% Coverage

3.20 The ILO Report commended the Abdulsalami Abubakar administration for the positive measures it had taken to promote, protect and enhance the enjoyment of human rights in the country, including the release of all political prisoners and detainees, the strengthening of the judiciary to enhance the rule of law, prison reform and the repeal or amendment of decrees that had infringed or derogated from fair trial guarantees, freedom of opinion and freedom of association.

Reference 187 - 0.01% Coverage

DOMESTIC IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS STANDARDS

Reference 188 - 0.01% Coverage

4.2 Nigerian courts have since then been applying the charter in human rights cases. 4.3

In response to complaints it received on the deteriorating human rights situation in Nigeria, particularly since 1990, and in line with its mandate under the charter, the African Commission on Human and Peoples' Rights (ACHPR) has issued pronouncements, enjoining the Nigerian government to comply with its obligations under the charter.

Reference 189 - 0.01% Coverage

In the wake of the political and constitutional crisis created by the annulment of the June 12 (1993) presidential elections, the ACHPR expressed grave concern at the development and called for the observance of human rights principles by the Nigerian government.

Reference 190 - 0.01% Coverage

Decree No. 107 of 1993, the Constitution (Suspension and Modification) Decree, which amends parts of Chapter 1V of the 1979 Constitution of Nigeria, dealing with Human Rights, specifies that the constitution and other laws, including international treaties, were subordinate to executive decrees. Judicial review of the decrees was ruled out, in particular as to questions touching Chapter 1V of the 1979 Nigerian Constitution.

Reference 191 - 0.01% Coverage

In spite of judicial pronouncements to the contrary, these executive decrees continued to operate up to May 1999, in violation of the African Charter and international human rights standards.

Reference 192 - 0.01% Coverage

NIGERIA'S INTERNATIONAL & DOMESTIC OBLIGATIONS TO INVESTIGATE HUMAN RIGHTS VIOLATIONS
Nigeria's legal obligations to investigate and provide remedies for gross violations of human rights derive from the international treaties, which it has ratified or acceded to, from customary international law and from its own domestic law, to all of which references have been made in previous chapters.

Reference 193 - 0.01% Coverage

Under international treaties on human rights, there are, in principle, two ways to address the issue of violations of human rights.

Reference 194 - 0.02% Coverage

The UN Declaration of Basic Principles of Justice for victims of crime and abuse of power proposes two definitions for such violations. The first definition characterizes them as "a violation of criminal laws operative within member-states, including those laws proscribing criminal abuse of power." Central to such violations is the individual or collective harm and suffering caused to persons, including physical or mental injury, through acts or omissions that can be imputed to the state. The second definition concerns

those “acts and omissions, imputable to the state, that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights.”

Reference 195 - 0.01% Coverage

The international obligation of the Nigerian government to investigate human rights violations in the country is contained in the

Reference 196 - 0.01% Coverage

international instruments relating to human rights, both in hard law and in soft law instruments.

Reference 197 - 0.01% Coverage

Brief references to some of the provisions of these international covenants or instruments on human rights are made in the paragraphs that follow to underscore Nigeria’s obligation under them.

Reference 198 - 0.01% Coverage

To supplement the more general language of its human rights treaties, the United Nations has developed a large body of materials, including the UN Principles on the Effective Prevention and Investigation of ExtraLegal, Arbitrary and Summary Execution (UN Principles), and the UN Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (UN Manual).

Reference 199 - 0.01% Coverage

Nigerian domestic law provides the authority for the legal obligation of the Nigerian state to investigate and prosecute the perpetrators of gross and other human rights violations in the country.

Reference 200 - 0.01% Coverage

More specifically, other sections of the constitution entrench the following principles: adherence to the rule of law and consistency with the supremacy clause of the constitution (Sections 1,4,5 and 6); the state’s duty to promote and protect human rights and to provide effective remedies to victims of human rights violations (Sections 6(6), 13-20, and 33-46); independence of the judiciary and its capacity to enforce human rights (Sections 6, 46, 235, 241 and 272).

Reference 201 - 0.01% Coverage

Section 5 of the National Human Rights Commission Decree No. 22 of 1995 also provides a legal basis for the obligation of the Nigerian state to investigate and prosecute cases of gross and other violations of human rights in the country.

Reference 202 - 0.01% Coverage

The section empowers the National Human Rights Commission to deal with matters relating to the protection of human rights, including

Reference 203 - 0.03% Coverage

monitoring and investigation of alleged cases of human rights violations in the country, as guaranteed by the Constitution of the Federal Republic of Nigeria, the African Charter on Human and Peoples' Rights, the UN Charter and the Universal Declaration of Human Rights, and other international treaties on human rights to which Nigeria is a party.

STATE RESPONSIBILITY UNDER INTERNATIONAL HUMAN RIGHTS LAW 6.19

International Human Rights Law (IHL) creates legally binding obligations for states. It is that branch of public international law that deals with the protection of individuals and groups against violations by governments of their internationally guaranteed rights, and with the promotion of those rights.

The obligations of the state under international human rights law extend to all entities and persons acting on behalf of the state, including public officials. At the international level, therefore, the states themselves are accountable for the individual practices of their officials, as well as for the legislative and other actions of their governmental agencies.

Reference 204 - 0.01% Coverage

As we pointed out in Volume 1, Chapter 2 of this Report, it was not until the end of the Second World and the establishment of the United Nations that human rights were universalized as a new type of rights, denoting fundamental human rights, which belong to all peoples as such, by virtue of their humanity. This new concept of human rights, as we have shown, has been variously elaborated, expanded and incorporated into national legal systems and domestic laws by international agreements and treaties.

Reference 205 - 0.01% Coverage

As most breaches of human rights are caused by the state acting against those in its jurisdiction, much of international human rights law 25

Reference 206 - 0.02% Coverage

operates beyond the national legal system, in order to provide redress for those whose human rights have been infringed upon or violated; and to provide an international yardstick by which the state's compliance with human rights standards can be objectively adjudged.

As we have pointed out in Volume 1, Chapter 2, if the promotion and protection of human rights is to be meaningful in international law, then the traditional international law of state-based jurisdictional exclusivity must give way, making it difficult for states and regimes to claim a domain reserve, which excludes the investigation of their human rights practices by the international community.

Reference 207 - 0.01% Coverage

There are, of course, various ways of calling states to account at the international level for their decisions and practices in relation to human rights.

Reference 208 - 0.01% Coverage

The exact procedures by which states can be held accountable for human rights violations are spelt out in all sources of law, including the decisions of international and regional courts, the resolutions of the UN General Assembly and in specialized human rights instruments.

Reference 209 - 0.01% Coverage

CORPORATE RESPONSIBILITY FOR HUMAN RIGHTS VIOLATIONS 6.27

In recent years, it has been generally acknowledged that companies in general and multinational corporations in particular, often controlling budgets bigger than those their host states in developing countries, and which, as a result, have a significant power and influence, have a social responsibility to actively and positively promote and protect human rights in their areas of operation.

Reference 210 - 0.01% Coverage

To take one example: the dominant position of the oil companies in Nigeria's political economy should bring with it a special responsibility to monitor and promote respect for human rights.

Reference 211 - 0.01% Coverage

But the oil companies also have specific social responsibility in respect of the human rights violations connected with their field operations, seen or viewed against the context of their oil exploration and production in the country. They have a duty to avoid both complicity in and deriving advantage from human rights abuses in the country generally and specifically in their area of operations and explorations, mainly in the Niger-Delta.

Reference 212 - 0.01% Coverage

For example, investigations carried out by Human Rights Watch, an international human rights NGO, have clearly shown that oil companies operating in Nigeria have generally not followed or complied with environmental standards and that they have failed to provide compensation for damage and oil spillage from oil exploration and production.

Reference 213 - 0.01% Coverage

The Ogoni presented a Bill of Rights to the Nigerian government and to the United Nations sub-committee of Human Rights on the Prevention of Discrimination against and Protection of Minorities, to the African Human Rights Commission, to environmental protection groups and to other NGOS in Europe and North America.

Reference 214 - 0.01% Coverage

NATIONAL REMEDIES FOR VICTIMS OF HUMAN RIGHTS VIOLATIONS: GENERAL OBSERVATIONS 6.49

Reference 215 - 0.01% Coverage

Yet, victims of gross violations of their human rights deserve particular attention, for the very fact that the violations in question may have been, and are generally committed by the state, through its agents.

Reference 216 - 0.02% Coverage

For this reason, too, special attention should be paid to gross violations of human rights. Indeed, if agents of the state commit the violations, this fact is likely, in the long run, to erode confidence in public institutions and in the government, with citizens seeing the state as enemy. In such a circumstance, the social trust that should glue and bind society and state together on the basis of reciprocity and mutuality will necessarily be weakened.

In addition to civil proceedings, victims of human rights violations have other ways of seeking remedies at the national level. It is only when they have exhausted domestic remedies that victims (of human rights violations) can seek redress at the international level, although there are 31

Reference 217 - 0.01% Coverage

International human rights instruments like the Convention on the Elimination of All Forms of Racial Discrimination (CERD) in its Article 14(2) sometimes make provision for the establishment of human rights complaint mechanisms at the national level.

Reference 218 - 0.01% Coverage

Two types of such complaint mechanisms have generally been established in many countries: the National Ombudsman or Public Complaints Commission, and National Human Rights Commission.

Reference 219 - 0.01% Coverage

The effectiveness of these mechanisms varies from country to country, depending on such factors as the commitment of national governments to the promotion and protection of human rights, the existence of countervailing forces in each country to limit arbitrary rule and ensure accountability, the resources, particularly human and material, made available to strengthen and empower the mechanisms, and a citizenry conscious of and ready to defend human rights.

Reference 220 - 0.02% Coverage

NATIONAL HUMAN RIGHTS COMMISSIONS 6.59

Human Rights Commissions, which typically function independently of other organs of government, are concerned primarily with the protection of citizens against discrimination and with the protection of their human rights. They are typically empowered to receive and investigate complaints from individuals and, occasionally, from groups, alleging human rights abuses committed in violation of existing national law. Some human rights commissions concern themselves with alleged violations of any rights recognized in national constitutions, while others can consider cases of discrimination on a broad range of grounds, including race, colour, religion, sex, national or ethnic origin, disability, social condition, sexual orientation, political convictions and ancestry.

Reference 221 - 0.02% Coverage

The Nigerian National Human Rights Commission was established by Decree No. 20 of 1995, with the primary promotional, protective and advisory or recommendatory functions and powers, among others, as spelt out in Section 5 of its enabling law, to: "(i) Deal with all matters resulting to the protection of human rights as guaranteed by the Constitution of the Federal Republic of Nigeria, the African Charter on Human and Peoples' Rights, the UN Charter and the Universal Declaration of Human Rights, and other International Treaties on Human Rights to which Nigeria is a party;

Reference 222 - 0.01% Coverage

(ii) Monitor and investigate all alleged cases of human rights violations in Nigeria and make appropriate recommendations to the Federal

Reference 223 - 0.02% Coverage

(iii) Assist victims of human rights violation and seek appropriate redress and remedies on their behalf;
(iv) Undertake studies on all matters pertaining to human rights and assist the Federal Government in the formulation of appropriate policies on the guarantee of human rights..."

SYNOPTIC COMPENDIUM OF DECISIONS BY INTERNATIONAL ORGANIZATIONS ON HUMAN RIGHTS CASES BROUGHT AGAINST NIGERIA

6.62. We provide below in tabular form a number of decisions and observations on decisions by international human rights organizations and similar bodies on cases involving human rights violations in Nigeria. The list, while comprehensive, is not exhaustive. As the tabulation indicates, what is provide is the following in respect of each case: the name of the case, the nature of the alleged violation and the result/decision.

Reference 224 - 0.02% Coverage

The trial of the military officers and the involved civilian before a military tribunal itself does not constitute a per se violation of human rights norms. The civilian was part of the common conspiracy and it is reasonable that he would be charged with his military co-accused in the same judicial process. However, it is important that Art. 7 be kept inviolable as it provides the minimum of protection to civilians and military alike, especially in unaccountable and non-democratic regimes. The critical factor is that judicial processes must be fair, just, and impartial. Trial of the civilian before a military tribunal, given these circumstances, was not a violation of Art. 7(1)(d). 2.

Reference 225 - 0.01% Coverage

Human Rights Committee

CCPR/C/79/Add.64Concluding observations of the Human Rights Committee: Nigeria, at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/837fe395750a6520c12563dc00513807?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/837fe395750a6520c12563dc00513807?Opendocument) 1. Revocation of all military tribunals and "ouster" clauses, ensuring fair trials and access higher tribunals for conviction and sentence review

Reference 226 - 0.03% Coverage

Situation of human rights in Nigeria, ECOSOC Commission on Human Rights Resolution 1997/53, at <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/740e4df108c5b850802566480057972f?Opendocument> 1. To release all political prisoners, trade union leaders, human rights advocates and journalists currently detained; to improve detention conditions 2. To ensure that all trials are held fairly and promptly and in strict conformity with international human rights standards; 3. To ensure the independence of a National Human Rights Commission and to cooperate fully with this Commission and its mechanisms.
E/CN.4/RES/1998/64Situation of human rights in Nigeria, ECOSOC Commission on Human Rights resolution 1998/64, at <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/>

ba4214dc929b1de08025666c00376f0b?Opendocument 1. To repeal all relevant decrees which oust the jurisdiction of the courts and to ensure that court orders are promptly and fully implemented 2. To ensure that all trials are held fairly and promptly and in strict conformity with international human rights standards. 3.

Reference 227 - 0.01% Coverage

Report of Special Rapporteurs on the situation of human rights in Nigeria, Report of the Special Rapporteur on extra-judicial, summary or arbitrary executions, Mr. Bacre W. N'diaye, and the Special Rapporteur on the independence of judges and lawyers, Mr. Param Kumaraswamy, at [http:// 53](http://53)

Reference 228 - 0.01% Coverage

A/53/366 Report by the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Nigeria, Interim report on the situation of human rights in Nigeria, prepared by the Special Rapporteur of the Commission on Human Rights, at <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/eda3335b2fa15a00802566be00580144?Opendocument>

Reference 229 - 0.01% Coverage

Fully respect the rights to freedom of opinion, expression and association, freedom of the press, and the right to peaceful assembly, as set out in the International Covenant on Civil and Political Rights. 3. Immediately release all political prisoners, trade union leaders, human rights advocates and journalists currently being detained without charge or trial. 4.

Reference 230 - 0.01% Coverage

Report of the Special Rapporteur on the situation of human rights in Nigeria, Report submitted by the Special Rapporteur of the Commission on Human Rights, Mr. Soli Jehangir Sorabjee, at <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/6e56e4aeeb8d8f118025673700450453?Opendocument> 1. Repeal determination of rights by military and other special tribunals. 2. Repeal All repressive decrees which infringe freedom of expression and freedom of the press, freedom of assembly and association.

Reference 231 - 0.01% Coverage

Promptly compensate those whose human rights have been violated.

Reference 232 - 0.02% Coverage

Report of the Special Rapporteur on the situation of human rights in Nigeria, Report submitted by the Special Rapporteur of the Commission on Human Rights, Mr. Soli Jehangir Sorabjee, at <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/a55c3d667425f3cfc125660f004afbcf?Opendocument> 1. Immediately release all political prisoners, trade union leaders, human rights advocates, and journalists currently being detained without charge or trial. 2. Immediately repeal all decrees which suspend the human rights provisions in the Constitution, including all decrees which oust the jurisdiction of courts in matters involving life and liberty of the people should be repealed. 3.

Reference 233 - 0.03% Coverage

5. Nigeria should abolish the death penalty. In the alternative, imposition of the death penalty should occur only in strict compliance with article 6 of the ICCPR, and in no circumstances should death sentences be carried out on persons under the age of 18 years; 6. Prompt compensation should be paid to persons whose human rights have admittedly been violated. 7. Prison conditions should be redressed as a matter of urgency. Immediate measures should be adopted to ensure that the conditions of detention fully comply with article 10 of ICCPR, the Standards Minimum Rules for the Treatment of Prisoners and other relevant international instruments. Solitary confinement should only be in rare cases of security risk where specific reasons for solitary confinement are recorded in writing. Those detained should be afforded periodic visits by family and should not be denied reading material and other basic amenities; they should also be given access to lawyers and doctors of their choice. 8. Repeal restrictions on the freedom of expression and freedom of the press; Cease practice of impounding passports without notice and without grounds should immediately terminate including providing a right of appeal against the impoundment to a judicial body. 9.

Reference 234 - 0.02% Coverage

OBSTACLES TO NIGERIA'S HUMAN RIGHTS LEGAL OBLIGATIONS 7.1

The failure of the state in Nigeria to comply with its international and domestic legal duties to investigate and provide effective remedies in cases of gross violations of human rights has cumulatively, over the years, encouraged and, indeed, given rise to a culture of impunity, whereby agents of the state, public functionaries and others generally need not fear punishment or the application of sanctions for violating the human rights of other citizens.

The major obstacles in Nigeria preventing investigation and the application of effective remedies in case of gross violations of human rights in Nigeria are: (i)

Reference 235 - 0.01% Coverage

This provision effectively ousted the competence and jurisdiction of the courts from enquiring into the validity of decrees made by the military government. Similar provisions are contained in almost all decrees affecting human rights proclaimed by the military since 1994

Reference 236 - 0.01% Coverage

Most courts cited the provision as a basis for declining jurisdiction, especially in cases involving violations of human rights by the military authorities.

Reference 237 - 0.01% Coverage

Further illustration of the problem posed for the rule of law and for the promotion and protection of human rights under military rule is provided by the combined effect of the following features of military enacted decrees: retroactivity; ouster clauses; legislative judgment; and prohibition of judicial appeal.

Reference 238 - 0.01% Coverage

Although the application of retroactive or ex post facto laws is prohibited under Article 15(1) of the International Covenant on Civil and Political Rights (ICCPR), and by the 1979 Constitution of the Federal Republic of Nigeria, there was no legal remedy against them [retroactive decrees] in Nigeria under military rule because, as we pointed out previously, judicial review of decrees for violating Chapter 4 of the 1979 Constitution of the Federal Republic of Nigeria, containing provisions on Fundamental Human Rights had been revoked by another decree.

Reference 239 - 0.01% Coverage

A second major obstacle to the prevention, investigation and application of effective remedies of gross violations of human rights in Nigeria under military rule has been the menace of impunity and law enforcements agents.

The nature of state responsibility for violations of human rights is different from that of violators within the private domain. This is because the official capacity within which a public functionary operates gives him a higher degree of responsibility and public trust.

Reference 240 - 0.02% Coverage

The State Security (Detention of Persons) Decree was amended in 1993 by the administration of General Abacha to make it more stringent. Law enforcement personnel were given a carte blanche to detain opponents of the regime at will. Thus journalists, politicians, human rights activists, labour union leaders, students and other pro-democracy advocates, who were critical of the regime, were detained under the decree. As long as the government produced evidence in court that a person was being detained under the decree, regular courts were precluded from examining the legality of detention orders issued under the decree.

Reference 241 - 0.01% Coverage

The general impression was that police authorities, reacting with apathy and sometimes setting up inquiries, were more anxious to cover any abuses and violations of human rights by policemen and policewomen than to investigate and punish erring police officers.

Reference 242 - 0.01% Coverage

The third obstacle to the investigation of, and the application of effective remedies for gross human rights violations in Nigeria during military rule is the non-observance of due process.

Reference 243 - 0.01% Coverage

First, the trials, by their structure and rules of procedure and proceedings, violated provisions of UN Human Rights Commission that civilians should only be tried by military courts under very exceptional circumstances; and that in such exceptional circumstances, such courts must afford all guarantees set out in Article 14 of the International Covenant on Civil and Political Rights (ICCPR).

Reference 244 - 0.01% Coverage

As the twentieth century dawned, many deeply-divided or "plural" societies were struggling to overcome a heritage of collective violence and gross violations of human rights in their societies.

Reference 245 - 0.01% Coverage

The twentieth century is, perhaps, best remembered for its legacy of gross violations of human rights, characterized by mass atrocities, violent conflicts, massacres and the oppression of one ethnic or religious or other sectarian group by another group; and tearing apart the social fabric of countries in every part of the world at the seams.

Reference 246 - 0.01% Coverage

But the twentieth century also witnessed concerted efforts at the national and international level to combat the scourge of ethnic chauvinism, political intolerance and economic devastation that detract or diminish from the worth of the person as such and to make the world safe and conducive for the promotion and protection of human rights and world development.

Reference 247 - 0.02% Coverage

countries that had experienced violent conflicts and gross violations of human rights. It in the context of achieving such a healing process and reconciliation that at least nineteen countries in the world [as at 2001], including Argentina, Chile, El Salvador, Guatemala, Nigeria and South Africa established Truth Commissions or similar commissions or panels, as temporary bodies, with official status and sometimes quasi-judicial truth-finding functions and powers, to investigate past histories of human rights abuses and violations in the various countries in which they were set up.

Reference 248 - 0.01% Coverage

Secondly, truth commissions offer victims of gross human rights violations legitimate for a to reclaim their human worth and dignity. At the same perpetrators of these violations are offered the opportunity to expiate their guilt.

Reference 249 - 0.01% Coverage

Thirdly, truth commissions can facilitate a national catharsis. In this way, future generations would be served by the knowledge that the record of past abuses was as complete as it could have been. It would also expectedly ensure the avoidance of gross violations of human rights in the future and facilitate the development of a culture of respect for human rights.

Reference 250 - 0.01% Coverage

While truth commissions is expected to lay the foundation for a shared future by coming to terms with the past, it is often difficult, however, to prosecute architects, instigators and perpetrators of human rights abuses and violations, especially when the number of such perpetrators is huge.

Reference 251 - 0.01% Coverage

In Guatemala, records from a secret military archive on the fate of 200 victims of human rights abuses who "disappeared" while under custody of the Guatemala military were made available to the American

Association for the Advancement of Science (AAAS) and other human rights associations after the publication of the report of the Guatemalan Truth Commission, but not to the commission itself.

Reference 252 - 0.01% Coverage

Indeed critics of South Africa's truth and reconciliation commission have asserted that perpetrators of gross human rights violations under the apartheid regime virtually got away with murder, and that the commission sacrificed justice for the search for truth.

Reference 253 - 0.01% Coverage

Another limitation that emerges from comparative experience in the work of truth commissions is that, generally, their reports fail to address the vexed issue of international involvement in sponsoring or tacitly, if not overtly supporting human rights violations. It was common during the cold war for the great powers to turn deaf ears and blind eyes to such violations by their surrogates in the third world.

Reference 254 - 0.01% Coverage

At the other extreme is the Ugandan Commission of Inquiry into Violation of Human Rights, established in 1986, whose duration is not limited by statute and is yet to report.

Reference 255 - 0.01% Coverage

In El Salvador, the truth commission's mandate was broad enough to allow it investigate what it considered to be serious acts of violence and human rights violations. In South Africa, the mandate of the truth commission was broad enough to allow the members of the commission considerable latitude and discretion, especially in respect of the definition of "gross violations."

Reference 256 - 0.01% Coverage

On the other hand, in Uganda the work of the Commission of Inquiry into Violations of Human Rights was adversely affected by an initial deficiency of staff, and financial and logistical resources. Its poor staffing and financial resources were only partially alleviated by a grant from the Ford Foundation.

Reference 257 - 0.01% Coverage

The general comparative pattern has, therefore, been that truth commissions that were well-funded and staffed have been more successful in depicting the overall picture of human rights abuses and violations and in contributing to the achievement of national reconciliation.

Reference 258 - 0.01% Coverage

Some have argued that the goal of a truth commission should be to identify institutions, parties, ideologies and structures that encouraged gross violations of human rights. According to this view, truth commissions should only secondarily be concerned with identifying particular individuals who played roles in, or who contributed to the abuses.

Reference 259 - 0.01% Coverage

It is for this reason that it is absolutely important for truth commissions to conduct their own investigation, in order to create as complete a picture as possible of human rights abuses in their countries. 79

Reference 260 - 0.03% Coverage

INTRODUCTION In pursuit of its main mandate of investigating human rights violations in Nigeria, and as a supplement to its major task of addressing the petitions it received and the public hearings it conducted with regard to these, the Human Rights Violations Investigation Commission commissioned extensive research and studies on the range, extent, magnitude and ramifications of human rights violations in Nigeria between January 15, 1966 and May 29, 1999, which is the period covered by its revised terms of reference. The main objective of this major undertaking is to document for posterity details of human rights violations in this particular, significant period in the development of Nigeria. It is also to help to unveil the nature, character and dynamics of human rights violations that might have occurred in each of the geopolitical zones, as well as provide details about the involvement of key agencies of the state, such as the Police, the Prisons, the military and other security agencies, in the violations of the rights of Nigerians. Also, it was decided that women's rights violations should be thoroughly investigated and documented in order to come to terms with the gender dimensions of rights violations in Nigeria.

Reference 261 - 0.04% Coverage

The end-product of this undertaking is an extensive documentation of virtually all the variegated and ramified dimensions of human rights violations in Nigeria in that sad period of the country's national history as a post-colonial entity ravaged by unbridled and reckless misrule under a succession of military regimes, which presided over a profoundly prebendal and patrimonial state. The research reports provide essential details of a range of violations of individual as well as group/communal rights, some of which are often not factored into current discourses of rights violations in Nigeria, and many of which have not found their way to the Commission in form of petitions and pleas for intervention. The documentation would certainly serve as a constant reminder to citizens about what has been wrong and how. But it will be especially helpful to generations to come, to better position and equip them to draw the appropriate lessons and safeguard the future from such crude manifestations of trampling of people's fundamental rights.

This volume condenses and presents, in a simple and accessible manner, the dense and rich findings contained in the several research reports submitted to the Commission by the commissioned researchers. Part I contains the summary of the six zonal reports, one on each of the six geopolitical zones. Part II presents findings, with regard to the roles of Prisons, the Police, the Military and other security agencies in human rights violations in Nigeria, as well as reports on the gender perspective of the dimensions of human rights violations.

Reference 262 - 0.05% Coverage

RE-CONCEPTUALIZING HUMAN RIGHTS VIOLATIONS One of the most noteworthy contributions of the commissioned research reports is the lucid articulation of the need to redefine the prevailing notions and perspectives of what constitute human rights violations in Nigeria, given the profound nature of the evidence which suggests a disturbing tendency to showcase certain categories of violations while relegating others to insignificance and virtual irrelevance. These prevailing perspectives, which have evolved in the context of the emergence and growing activism of the human rights NGOs against brutally

suppressive military regimes in Nigeria's recent history, have tended to narrow down and restrict an understanding and appreciation of the complex character and dimensions of what actually constitute human rights and their violations in the postcolonial Nigerian polity. They have tended to focus upon the more visible, and elite-driven notions, especially freedom of speech, association, and so on. The significance and range of social, cultural and economic rights and their violations are only rarely and even then only selectively and in an off-tangent way, focused upon.

Yet, the reality of the situation is that human rights violations in contemporary Nigeria have a wider historical, social and cultural contexts and dimensions, as well as complex configurations, and situational and contextual attributes. As has been aptly observed, human rights abuses are "products of particular processes in the economic, social, cultural, and political systems of the country" (ASCHR, October 2001:2); and a clearer and deeper understanding of these goes a long way to facilitate informed analyses and recommendations on how best

Reference 263 - 0.05% Coverage

understanding the state of human rights in Nigeria today, and the ranges of violations that have occurred over time.

The Abdullahi Smith Centre of Historical Research (ASCHR), a private non-governmental research centre based in Zaria, has extensively and parsimoniously addressed these issues in the report it submitted to the Commission. The Centre's submission reviewed the Nigerian intellectual and socio-political landscape and identified four prevailing perspectives on human rights and their violations in Nigeria.

The first is what can be termed as the "Head of State-Centred perspective." This attributes violations of rights to the character of the individual civilian or military ruler in power, and assumes that, for example, when rulers are God-fearing, human rights are upheld, and when they are bad or evil, human rights are violated. Also, this perspective assumes that good rulers can be surrounded by bad lieutenants and advisers who will repress and assault the liberties of citizens and trample on their rights to serve their regime's interests.

The second perspective is the "Military Ruler perspective," which holds that military rule is by its very nature dictatorial and hence authoritarian, repressive and intimidating. Thus, according to this perspective, violations of human rights commence from the very act of the military's illegitimate overthrow of an elected government, and ruling without the consent of the ruled, using military decrees to subordinate the fundamental human rights of citizens enshrined in the constitution.

The third perspective ascribes human rights violations in Nigeria to "Northern Domination." It holds that rights violations are associated

Reference 264 - 0.05% Coverage

with, or as a result of, attempts by successive civilian and military regimes, which were led by Northerners, to impose and maintain Northern dominance on other parts of the country, and that in the process, human rights are violated, using the Military, the Police and state policies.

The fourth perspective attributes human rights violations in Nigeria to low levels of education and training, lack of equipment, corruption, poor orientation of law-enforcement agencies and gross shortcomings of the Nigerian judiciary. From this perspective, human rights are violated due to the inadequacies of law enforcement agencies which define the parameters within which a given regime operates.

Although each of the four listed perspectives help to explain human rights violations in some cases, some of the time, they do not provide a holistic picture, and fail to provide an adequate framework for analyzing, understanding and explaining the complex nature of rights violations in neocolonial Nigeria. As

plausible and feasible as some of these explanations may seem, they only provide a limited explanatory framework, which substantively reduces our ability to formulate effective measures to forestall and prevent, or at least minimize future rights violations in Nigeria.

For example, ASCHR's submission argues that these perspectives fail to take into account the abundant evidence of human rights violations in the history of Nigerian political development, which are clearly attributable to, or associated with, political dynamics in pressure groups, and political parties that engage in electoral contest for power. But, even more significantly, they fail to take into account the fact that systematic denial of opportunities for the nurturing of civilian

Reference 265 - 0.04% Coverage

structures and processes for electoral contestation has helped to create the political and administrative contexts in which violations of rights are maximized. For such civilian structures and processes go a long way to condition the necessary public service organs to uphold the rule of law and supremacy of the constitution, which are essential requirements for promoting human rights and preventing their abuse. Hence, implicitly, it is important to use as a framework a more integrated perspective which recognizes that human rights exist and are exercised or violated within definite social, political and administrative contexts. And that the appropriate contexts for their protection and promotion, or prevention of abuse, are based on the existence of credible organizations, institutions, networks and links in the civil society that are capable of contesting with one another and controlling the state organs. It ought to be recognized that the organs of the state, including the judiciary, the Police and the Military, are incapable of protecting human rights unless they are conditioned and influenced by civilian political structures and processes, which exercise political hegemony and control over them to ensure that they protect these rights. The task of assuring better guarantees of rights, and prevention of violations, therefore, requires the institutionalization of a culture of democratic conduct based on strong and effective political structures and processes that ensure legitimate civil control of the organs, structures and agencies of the state.

Reference 266 - 0.02% Coverage

1. In the bid to enhance adequate understanding of the dynamics of the socio-cultural, economic and the political context that underscore rights violations in the country, the Commission assembled an expert group of intellectuals, scholars and academics to conduct extensive research into the state of human rights in the six geo-political zones of the country and a select number of state institutions. The volume is presented in two parts: Part I focuses on the zones, while Part II examines the select institutions. The six geo-political zones are North-West, South-South, North-Central, North-East, South-West, and South-East, while the institutions are The Nigeria Prisons, The Nigeria Police....

Reference 267 - 0.02% Coverage

11. The Nigeria Prisons: The chapter is sub-divided into three broad sections: Background information on the history, functions and administrative structures of the Nigeria Prisons Service; Critical problems and issues relating to human rights violations; and, Recommendations.

12. The Nigeria Police: The report details the origin of the police in Nigeria; The impact of military rule on the police; Patterns of human rights abuse by the police which include Illegal arrest, detention without trial, Torture, and Extra-judicial killing. For the reversal of this trend, the chapter recommends a number of measures which include structural reform for institutional reorientation, human resource training, and democratisation of the polity.

Reference 268 - 0.01% Coverage

help to contextualize the pattern, nature, character and dimensions of human rights violations in the zone.

Reference 269 - 0.01% Coverage

human rights violations in the zone include the following: 1. compulsory acquisition of landed property from individual peasants and communities, by government and other powerful people connected with the government, without due compensation;

Reference 270 - 0.01% Coverage

6. The seizure of land from Ado Yakubu by NEPA at Hanwa, Sabon Gari LGA, Kaduna State, in 1978. To prove this, there is the letter to the Human Rights Violations Investigation Commission dated 27/9/2000, pictures of Ado Yakubu at the plot seized by NEPA, Kaduna State Land Revenue Receipt dated 1/11/1989 and an Upper Area Court Zaria Judgement, dated 26/6/1981.

Reference 271 - 0.01% Coverage

1. The seizure of land from the Late Umaru Tela, at Zaria City, by Zaria LGA, Kaduna State in 1980. Evidences are: Extract from the Report of the Lands Investigation Commission Kaduna State, Letter to the Human Rights Violations Investigation Commission by two sons of Umaru Tela dated 19/9/2000 and Site Plan of the plot.
2. The seizure of land from the Gobirawa Kudingi family, the village head of Biye Malam Tanimu, Giwa LGA, Kaduna State, in 1989. Proofs include: (i) Letter to the Human Rights Violation Commission dated 4/10/2000.

Reference 272 - 0.01% Coverage

Petition to the Human Rights Violations Commission dated 24/9/2000.

Reference 273 - 0.01% Coverage

5. The seizure of land from J.S. Yusuf and seven others by a Chinese Company, CCECC, working for the Nigerian Railway Corporation (NRC) at Kufena, Zaria LGA, Kaduna State, in 1997. Available evidences include: (i) Letter to the Human Rights Violation Investigation Commission dated 26/9/2000.

Reference 274 - 0.04% Coverage

states historically referred to as the Niger Delta. These states are Akwa Ibom, Bayelsa, Cross-River, Delta, Rivers and Edo. It is an area inhabited by about 12 million people with different cultures, languages and histories who, united by their historical status in Nigeria, now share a common identity as southern minorities. Historically, the peoples of the area were at the forefront of minority agitation in the colonial and the immediate post-independence periods. Their situation has not changed as their demands and position in the Nigerian federation remain unaltered despite the different commissions that have been set up by successive administrations to look at the question of the minorities. What has exacerbated the problem of the Niger Delta is the question of oil. Oil, which is the mainstay of the Nigerian economy,

contributing about 90% of the nation's foreign exchange earnings and revenue, is produced in the region. However, the Niger Delta region remains grossly underdeveloped, pauperized, marginalized, and largely a poverty zone. The basic facilities and infrastructure of a modern society like potable water, electricity, health care facilities, good roads, cottage industries and employment are lacking in the area. It is this paradox and apparent tragedy of poverty in the midst of wealth of the Niger Delta people that forms the political economy of human rights violations in the area. This issue shall be dealt with in greater detail in the subsequent section of the report that deals with the background and context of human rights violations in the Niger Delta region.

Reference 275 - 0.01% Coverage

2.2 The nature of human rights violations investigated in the

Reference 276 - 0.02% Coverage

community/group deprivations, which include social, political, economic, cultural and linguistic rights and access to justice. The third category of rights is the systemic deprivations. These are violations that arise from the structure/belief systems/values of the community or of the Nigerian nation. In terms of specific details investigated, the report is structured into the following format: 1. Violations of human rights in the civil war. 2. Abandoned property as a violation of human rights. 3. Violations of human rights of communities. 4. Violations of human rights of individuals. 5. Violations of environmental rights. 6. Culture-based violations of rights. 7. A supplementary report on the Ogoni case.

Reference 277 - 0.01% Coverage

situation in the other areas is less deserving, but that the Ogoni case is the most dramatized and pathetic story of human rights violations in the Niger Delta region. It is a representative sample of the brutality, inhuman treatment and savagery, which the Niger Delta people are subjected to.

2.4 The conception of human rights that guides the report

derives from the international and national instruments and legal codes on human rights. These include the United Nations Charter on

Reference 278 - 0.01% Coverage

the Universal Declaration of Human Rights, the African Charter on Human and Peoples Rights, and the Nigerian Constitution.

Reference 279 - 0.02% Coverage

were commissioned to do detailed studies in all the six states in the zone. Two researchers were to work on each state. The research itself was preceded by a methodology workshop organized by the Centre for Advanced Social Sciences (CASS) in Port Harcourt. At the workshop, researchers were briefed of the objectives, framework, methodology and time frame for the research. Members of each research team were encouraged to share their field tasks in such a way as to cover as wide a range of human rights abuses as possible. The methods adopted for the research include interviews, questionnaires, and focused group discussions, as well as library search. As such, the preparation of the report from this zone was based on field research, post-field debriefings, and library sources.

Reference 280 - 0.02% Coverage

process of the research report. These include inadequate time in conducting the research, which made the reconfirmation of data or information given difficult in some cases, and the attitude of some respondents. Some victims of human rights violations were not keen to cooperate with the researchers. While some of the victims were afraid of reprisals from perpetrators of the abuse that are still alive, others did not think that bringing back the past was in their best interest. Some also claimed that they had forgotten the perpetrators and would prefer to "let bygone be bygone." The researchers in such cases exercised discretion. Another constraint in the process of preparing the research report relates to the difficulties confronted in

Reference 281 - 0.04% Coverage

government bureaucracies, which made the task of getting information from government organs and agencies nearly impossible. The response in government departments was either the "officer in charge is not around" or "there is need to get clearance from the top to disclose information or grant interview." This often took weeks to be done. The last constraint has to do with inadequate information on two special human rights violation cases. These are on some significant episodes of environmental rights abuses and the post-civil war issue of abandoned properties. The sensitivity and emotive nature of these issues made respondents to be quite cautious. However, with extra efforts of time, energy and resources, the researchers were able to elicit some information on environmental rights abuses in the Niger Delta. With regard to abandoned properties, the researchers could not access government documents especially of the Rivers State government. A government official who was privy to the various initiatives, discussions and policy implementations on abandoned property jointly undertaken by the Rivers State government, the federal government, and the eastern states governments during the second republic, and who promised to help with information and the necessary documents, suddenly fell ill, and was flown abroad for medical treatment. However, this report presents an overview of the problem of abandoned property in the Niger Delta area, especially the reactions of the different stakeholders on the issue.

THE BACKGROUND AND CONTEXT OF HUMAN RIGHTS VIOLATIONS IN THE NIGER DELTA 2.7

Reference 282 - 0.01% Coverage

property, the *raison d'être* of human rights violations in the Niger Delta region has to do with the political economy of oil. As earlier noted, oil, which forms the live wire of the Nigerian economy, is largely

Reference 283 - 0.01% Coverage

Liberties Organization (CLO), a prominent human rights group in Nigeria, has this to say: Today, the entire Niger Delta and coastal wetlands of Nigeria

Reference 284 - 0.01% Coverage

2.13 The above is the background and context of human rights violations in the Niger Delta. These violations have become perhaps the most dramatized and publicized among human rights violations in Nigeria.

VIOLATIONS OF HUMAN RIGHTS IN THE CIVIL WAR 2.14

Reference 285 - 0.02% Coverage

lawlessness in which human rights violations were rampant, especially as the region was part of the theatre of war. Human rights violations occurred on both sides of the divide by federal and Biafran troops. From the reports collated, there were violations of rights, which showed a total disregard for the rules of treatment of civilians and prisoners of war during the civil war. Those rights violations include: 1. Killings. 2. Maiming. 3. Rape. 4. Torture and beatings. 5. Abduction of wives and children. 6. Seizure of property. 7. Use of civilians as human shields. 8. Destruction of property.

Reference 286 - 0.01% Coverage

states that constitute the Niger Delta region. As earlier noted, both the Biafran and federal soldiers were involved in such human rights abuses. The violations that occurred were both communal and individual in nature. A few of those violations will be cited.

Reference 287 - 0.01% Coverage

committed various war atrocities and human rights violations as enumerated above. Civilians were generally casualties of those war crimes. Communities and individuals that were considered not to serve their interests or suspected to have sympathy with the federal side were treated as saboteurs and ruthlessly dealt with. Some of these cases will be cited.

2.17 In Akwa Ibom State, several human rights violations and

Reference 288 - 0.02% Coverage

no less appalling as regards human rights violations committed by Biafran soldiers during the war. In Ikom in Cross River state, Biafran soldiers were alleged to have shot the following men: Eyam Akpasat, Azom Eyam, Ozanza Ekum, Nzan Okpa, and Ekum Edium. Also, in Okanga village in the same local government area, Ikom, the houses of some people were destroyed, which include Mr. Ntan Ebayi, Odiga Eyam, and Nzam Nyam. There were other reported cases of inhuman treatment by Biafran troops in the state. In Delta and Rivers States, reported cases include: in Koko in Delta State some inhabitants - late Thomas Nanna, Edward Nanna, Balance Nanna, and Shadrack Atoma were arrested and detained for a long time having being suspected to be "spies" for the Nigerian government. They were only released after the community pleaded for their lives. In Rivers State, a prominent

Reference 289 - 0.01% Coverage

2.25 On the whole, human rights violations were very rife during

Reference 290 - 0.01% Coverage

ABANDONED PROPERTY AS A VIOLATION OF HUMAN RIGHTS 2.26

Reference 291 - 0.02% Coverage

controversial issues that arose after the Nigerian civil war. After the end of the civil war, people from Eastern Nigeria alleged that their properties which were abandoned during the war in other parts of the country were taken over by the government or people of those localities. This abandoned property issue has featured prominently in the discussions of post-war reconciliation, marginalization, and national

integration. The abandoned property issue within the context of the current discourse on human rights has assumed the dimension of property and citizens rights.

Reference 292 - 0.01% Coverage

issue of abandoned property. The first is that the issue is a very complex one, and not as straightforward as it appears. Second is that the issue is rooted in the historical relationship between the Igbo community and the indigenous people in Rivers State, in which the latter raises claims of marginalization and domination by the former in the area. The third is that resolving the issue of abandoned property, which is an important human rights issue, should take a national

Reference 293 - 0.01% Coverage

VIOLETIONS OF HUMAN RIGHTS OF COMMUNITIES 2.32

Most human rights violations in the south-south zone are

Reference 294 - 0.02% Coverage

6. The last dimension of human rights violations is the social effect of the activities of oil multinational corporations in the area. Due to the lopsided wage structure in which the oil workers in the area earn "abnormal salaries" that do not fit into the wage structure or income levels of the community, social vices like prostitution become rife among the local inhabitants who provide sexual services to the rich oil workers. 2.33 The following are illustrations of the categories of human rights violations in the Delta region identified in the preceding discussion.

Reference 295 - 0.01% Coverage

VIOLETIONS OF HUMAN RIGHTS OF INDIVIDUALS 2.34

Reference 296 - 0.01% Coverage

g. Some activists like Mr. Anyakwee Nsirimovu, Mr. Azibaola Roberts, Isaac Osuoka, and Felix Tuodolo have at various times been arrested and detained for leading popular resistance in the Niger Delta. The offices of Environmental Rights Action, Institute of Human Rights and Humanitarian Law, and the residence of Dr. Moffat Akobo, chairman of the Southern Minorities Commission, have at various times been invaded and ransacked by the SSS.⁸

Reference 297 - 0.01% Coverage

Nigeria including the Niger Delta region continues to promote various forms of human rights abuses especially against women. Women are generally denied equal rights with men and treated like second class citizens in the community. Also, cultural values and practices are sometimes harsh to other categories like youth and children. Two examples will be cited of rights violations based on culture in Cross River State.

Reference 298 - 0.03% Coverage

perhaps one of the most sordid cases of human rights violations in the Niger Delta. Their plight has attracted attention and sympathy worldwide. The Ogoni is a minority ethnic group in South-South Nigeria. The problem of the Ogoni began in the late 1960s when oil was struck in Ogoniland in commercial quantity, and the subsequent incursion of the oil companies into the area for oil exploration and exploitation. The company that secured oil mining leases for the area was Shell. Oil exploration succeeded in disrupting the socioeconomic and cultural life of the Ogoni. For over thirty years, the people of Ogoni protested against the seizure of their land and the degradation of their environment. Nineteen hundred and ninety was a turning point in the history of the struggle of the Ogoni. The Ogoni adopted a Bill of Rights, which was presented to the president of the Federal Republic of Nigeria. The Ogoni Bill of Rights, inter alia, demanded the right to self-determination for the Ogoni as a distinct people of the Nigerian federation; adequate representation of Ogoni

Reference 299 - 0.02% Coverage

including the United Nations, have sought to investigate the plight of the Ogoni as the area elicited international attention especially after the murder of Ken Saro Wiwa and the Ogoni 8. Organizations like the Human Rights Watch, Civil Liberties Organization, the World Council of Churches, the Rapporteur for the Commission on Human Rights, and a U.N. Mission to Nigeria in 1996, have all done extensive reports detailing the level of human rights violations in Ogoniland. Apart from the problem of environmental degradation, the Ogoni people have suffered immensely from killings, torture, arbitrary arrests and detention, rape, destruction of property, and a general atmosphere of siege and militarism by state security forces. Attached is an appendix of the list of some people who were victims of human rights abuses.

Reference 300 - 0.01% Coverage

human rights violations in the area go beyond a legal and judicial issue, and touches on the moral conscience of the Nigerian state and society. Successive regimes in Nigeria, especially military regimes have displayed high-handed treatment,

Reference 301 - 0.01% Coverage

OBSERVATIONS AND RECOMMENDATIONS 1. This research report in terms of its scope does not cover all the human rights abuses that occurred in the South-South geopolitical zone of Nigeria. It is simply a sample survey of those violations. There may be need to undertake a more comprehensive investigation in the future in which the core human rights problems of the area can be further analyzed and appropriate modes of remedial action, medium and long-term arrived at.

Reference 302 - 0.01% Coverage

3. Individuals, families and villages that were victims of gross human rights abuses during the civil war in the South-South zone should be revisited with a view of recommending state apology and some form of compensation.

Reference 303 - 0.01% Coverage

9. The report indicates that the Nigerian state and the oil MNCs in the oil and gas industry do not sufficiently appreciate environmental rights as important aspects of human rights of the people and communities. It is therefore recommended that a review of existing

Reference 304 - 0.04% Coverage

Kogi, Kwara, Nasarawa, Niger and Plateau that historically formed the core of the Middle Belt that was the bastion of ethnic (and religious) minority nationalism within the old Northern region. It has continued to be a hotbed of dissenting and opposition politics, as is evident in the efforts to reassert Middle Belt identity by, for example, insisting on calling the zone by its old name rather than North-Central. But partly arising from contestations over power, privileges and resources among the numerous ethnic and sub-ethnic groups encapsulated within the states, and partly due to the excesses of prolonged undemocratic rule, especially by the military, the zone has also been host to riots, protracted internal conflicts, and insecurity of lives and property. This state of affairs has been conducive to human rights abuses and violations at the individual and group levels.

3.2 The human rights violations investigated in the zone and discussed in this report – defined as acts that violate the range of human rights implicit in and guaranteed by Nigeria's constitution(s) and statutes in operation at the time of violations – cover a broad spectrum and fall into two broad categories: those of individual rights and those of group or collective rights. The individual rights that were most problematic in the zone included the right to life, right to property and adequate compensation in the event of acquisition by the state, right to fair hearing, right to equal citizenship and equality of treatment, access and opportunities, right to just and humane

Reference 305 - 0.01% Coverage

following were the most important sources of human rights problems, violations and abuses in the area: • Contestations over traditional institutions and practices • Systemic deprivation and discrimination • Perceptions of varying levels of marginalization and neglect • Labour-related violations • Excesses and lack of respect for human rights by the security and law enforcement agencies

Reference 306 - 0.01% Coverage

report and, second, of the background and context of human rights violations in the sections which follow.

Reference 307 - 0.02% Coverage

was commissioned to investigate and document the extent, types, patterns, victims and perpetrators of human rights abuses and violations in the North-Central zone between 15 January 1966 and 28 May 1999. The Centre had a team of seven researchers, comprising one coordinator and six researchers each of who covered one state. Data for the report were collected from primary and secondary sources. Primary data was obtained through interviews and questionnaire administration. The questionnaire sought to elicit responses on the nature of violation, which was operationally defined as deprivations – personal deprivations (of right to life, right to human dignity, women's rights, etc.), community/group deprivations (of cultural, political, social and economic rights) and systemic deprivations (resulting from neglect and exclusion,

Reference 308 - 0.02% Coverage

panels and commissions of enquiry, government white papers on the reports, published and unpublished documents and records of various levels of government, newspapers and magazines, publications and annual reports of civil liberties/human rights organizations, annual reports of state branches of the Public Complaints Commission, documentation of human rights abuses and injustices, including petition files, by the National Orientation Agency, and petitions by individuals, communities and organized groups. Most of the documents from these sources were compiled into volumes of

Reference 309 - 0.02% Coverage

appendices, which form the basis for much of what is contained in the present report. The methodology encouraged a fair balance between official-governmental and non-governmental perspectives, which tend to tell different, and often opposing stories. In this regard, the annual reports of the Public Complaints Commission, a body which is often forgotten and not accorded its rightful place in human rights matters in the country, proved to be a goldmine of valuable data. One of the major recommendations to be made at the end of this report is that there is need to encourage and strengthen the good work of the commission, which has done remarkably well at the grassroots. The commission will certainly be critical to the institutionalisation of human rights investigation.

Reference 310 - 0.02% Coverage

Human rights regimes are shaped by a constellation of specific historical, social, political, economic and cultural factors. To place analysis of human rights abuses and violations in the NorthCentral zone in perspective, therefore, we need to identify the factors that made certain violations more prevalent than others in the zone. Ordinarily, this would appear to be a difficult task in a zone where there are six different states, but the states have a lot of common and shared experiences, which have given the entire zone something of a distinct identity in many areas including, in this case, human rights.

Reference 311 - 0.03% Coverage

experiences are reinforced by other historical and cultural commonalities in the zone that have implications for human rights. The first of these is that the Middle Belt, especially the outlying areas of the Niger-Benue confluence, has witnessed massive population movements, migrations and displacements. This explains the rather high-tension ethnic mixes and endemic conflicts among groups in the region, which have long histories of contestations over boundaries, ownership of territory for farming and other economic purposes, over who is "indigenous" and "stranger" or "foreigner", and over which groups are "superior", "core" "marginal" and "peripheral". Another important strand of this history involved the administrative and territorial reorganizations undertaken by the colonial authorities. This was done as a matter of administrative expediency and to facilitate indirect rule, but the reorganizations had lasting and mostly negative consequences for inter-group relations.

Reference 312 - 0.02% Coverage

rulers who are regarded as symbols of group identity, cohesion and group worth – group worth being measured by the rank and status of the traditional ruler – is also explained within the foregoing context. Thus, traditional symbolisms and attachments have been important elements in the struggle for supremacy among the various groups, and were conducive to a variety of systemic deprivations and

human rights abuses, ranging from tradition-oriented discrimination against women to violations of social, political and economic rights of groups. In some instances, traditional beliefs were a constraining factor in human rights consciousness. As the Report of the Judicial Commission of Enquiry into the Kabba Disturbances of September 1994 noted, there were a number of "sensitive" issues aggrieved

Reference 313 - 0.02% Coverage

in the country was subjected to prolonged authoritarian rule, especially by the military. However, one of the distinctive characteristics of the zone in the latter part of the period covered by the report (mid-1980s to the 1990s) was the relative absence or underdevelopment of militant and populist civil society organizations with pro-democracy and civil liberties/human rights agenda, that spearheaded opposition to military authoritarian rule and served as human rights watchdogs and defenders in other parts of the country. Local branches of the Academic Staff Union of Nigerian Universities (ASUU) and students unions may be regarded as exceptions in this regard, but these organisations were primarily interested in the interests and welfare of their members.

Reference 314 - 0.01% Coverage

context for understanding the human rights problems in the NorthCentral zone. We now turn to the categories of abuses and violations investigated and documented in the report by AFRIGOV.
HUMAN RIGHTS VIOLATIONS

Reference 315 - 0.01% Coverage

These contestations also proved to be crucial to human rights violations, not only because they were exclusionary and discriminatory in ways which people were sometimes afraid to talk about, but also because they provoked violent riots and conflicts. The major cases from investigations carried out in the zone were those over the Egungun and Ebora in Kabba and over festivals in Ebiraland.

Reference 316 - 0.02% Coverage

human rights violations in Nigeria is the distinction often made between indigenes and non-indigenes of communities. It involves denying so-called non-indigenes (also called 'strangers', 'visitors') access to political representation, participation, land and other economic resources, and subjecting them to discriminatory treatment in matters like admission of children to school, notwithstanding their length of stay or residency and the fact that they pay tax and perform other obligatory citizenship duties. Discrimination against nonindigenes has been reinforced by official and legal provisions (the constitution for instance) and practices (such as different school fees for indigenes and non-indigenes), which privilege indigenes. Regionalism, statism and localism represent critical stages in the contemporary consolidation of this form of discrimination, but at the

Reference 317 - 0.01% Coverage

local level, the indigene/non-indigene cleavages are embedded in contested histories of migration, settlement and territoriality. This is most clearly dramatized in the North-Central zone, which has been a centre of massive migrations, population displacements, and resettlements. The following cases show the nature of human rights problems that have arisen from this situation.

Reference 318 - 0.01% Coverage

Central zone, as reflected by the fact that most of the human rights cases investigated by the Public Complaints Commission (PCC) and covered in the annual reports of state branches were labour cases. They ranged from wrongful termination of appointment to unjust work and retirement conditions. The commission found that the problems partly emanated from lack of familiarity with the labour code and working conditions and partly from the inefficient machinery for processing pension papers. Another case, which highlights fairly

Reference 319 - 0.01% Coverage

authorities on a variety of issues with serious human rights implications. The issues fell into two categories: retrenchment of academic staff, and appointments, promotion and welfare issues. The human rights dimensions of these issues, as we shall see below, had largely to do with the extent to which the actions of the university conformed to laid down statutes and procedure (as set out in the

Reference 320 - 0.02% Coverage

in the North-Central zone. The milieu of endemic conflicts and riots, abuse of office, excessive use of power (of which the most rampant was the flouting of court orders) and basic lack of respect for fundamental human rights and rule of law by overzealous law enforcement and security agencies, and authoritarian military rule were major underlying and reinforcing factors in this regard. These violations took the form of unlawful arrests and detention, torture, terrorism and intimidation. Another category of human rights violation involved the non-payment of adequate compensation to individuals, families and groups whose landed properties were compulsorily acquired by the state.

Reference 321 - 0.02% Coverage

Having discussed the highlights of human rights abuses in the North-Central zone based on the report submitted by AFRIGOV, what can be said by way of conclusion? First is that by the very nature of the complex ethnic composition of the zone and a history of migrations and displacements, which are still on-going, it was an area of endemic conflicts. Secondly, tradition was a very strong component of human rights deprivations. Third, the excesses of the police, military and security agencies, as well as the excesses of overzealous and highly partisan state officials, which were facilitated by military authoritarian rule, were the major sources of human rights violations.

Reference 322 - 0.01% Coverage

4. There is need for an intensive re-orientation of the police, military, security forces, intelligence agencies and other law enforcement agencies with a view to making them more human rights and rule of law friendly. At the same time, there is need for public enlightenment campaigns and human rights education for all segments of people, especially those in the rural areas

Reference 323 - 0.01% Coverage

ordinary people. This commission and, indeed, all other such bodies should be strengthened as institutions for strengthening and consolidating democracy and human rights.

Reference 324 - 0.01% Coverage

many socio-cultural and historical political characteristics with the northwest zone, the pattern of human rights violations are also similar. These can be discussed under the following categories: 1. violations of land rights 2. violations of community rights 3. violations of right to life.

Reference 325 - 0.03% Coverage

activities of agricultural development projects, which, like the river basin authorities, have been very active state agencies of intervention in the agriculture-based areas of Nigeria, especially the rural segments. Below are some cases of violations of land rights in the North-East Zone: 1. The seizure of land from Muhammadu Lawan Kwando and 17 others by the Gombe State Agricultural Development Project (GSAP) at Kwando village, Yamaltu-Deba LGA, Gombe State. Their 6,000 hectare land was taken on loan by the Gombe Agricultural Development Project in 1975 for seedling multiplication and distribution to farmers. However, no seedlings were multiplied rather Officials of the project converted the land into their personal uses. The rightful owners demand for a return of their land was ignored by the officials, even though the agreement they signed with the ADP was for only five years. Hence, Malam Kwando petitioned the HRVIC for assistance to get back their land. Two letters affirm this seizure, the letter to the Human Rights Violations Investigation Commission dated 7/11/2000 and a letter to Muhammadu Lawan and 17 others by the Programme Manager, Gombe State Agricultural Development Project, dated 8th May 2000.

Reference 326 - 0.01% Coverage

and all their entreaties for a return of their land fell on deaf ears, until they decided to petition the HRVIC. This seizure was witnessed to by a letter to the Human Rights Violations Investigation Commission dated 10/10/2000.

3. The land seized from Babadidi Bolari at Gombe, by Gombe Local Government, Gombe State, 1977. He claims that the local authorities compulsorily took over his land and sold it. He wrote to the Human Rights Investigation Commission, on 10/10/2000 seeking redress.

Reference 327 - 0.02% Coverage

ii. The killing of Alhaji Saidu Gomna by military and police personnel in Operation Damisa at Hausari ward, Maiduguri, Borno State on 15th January 1991. Letters written by Balarabe Saidu Saleh on 20th May 1996, 15th October 1996, 21st October, 1996, 25th August, 1998 and 11th February 1999 to the Chairman, National Reconciliation Committee, the Brigade Commander, 21 Army Brigade Maiduguri, the Civil Liberties Organisation, North-East Zone, Maiduguri, the Secretary, Human Rights Commission Abuja and the Commission for Public Complaints, Maiduguri, respectively, are witnesses to this killing. Other evidences include a letter, No. PCC/BOS/2/99/17, of 1st March 1999 from Commissioner of Public Complaints, Borno State, to the Brigade Commander 21 Army Brigade, Maiduguri.

Reference 328 - 0.04% Coverage

human rights violations in South-Western Nigeria from 1966- May 1999. A total of 568 cases of human rights violations that occurred in the region for this period were reviewed. The cases are divided into seven categories. These are extra-judicial killings, political assassinations and attempted assassinations;

unlawful arrests and detention; violation of human dignity as reflected in inhuman treatment, torture, extortion and other forms of brutality; freedom of expression and Press freedom; Political and Citizenship rights; social and economic rights including violation of property rights; and academic freedom and state of University. These categorisations of rights violation do not follow any strict pattern, but designed only to capture the various dimensions which rights violations assumed in South-Western Nigeria.

5.2 The report takes a global view of the issue of human rights

drawing from a broad range of perceptions and understanding of it and relies on legal instruments, both local and international as basis for its pursuit and legitimate claims. Essentially, human rights is viewed in more liberal terms as the demands and claims that individuals and groups make on society and protected by the law or considered as aspirations to be attained by society. The legal sources of these rights include the Nigerian constitution, African Charter on Human and Peoples Rights, and the Universal Declaration of Human

Reference 329 - 0.01% Coverage

5.4 Some of these rights are fundamental human rights and

Reference 330 - 0.02% Coverage

5.5 While human rights were violated under first civilian regime (1960-1966), the high points of human rights violations started 122

with the military incursion into politics in 1966. A significant part of that process was the civil war period when flagrant violations of human rights occurred in a war situation. The trajectory of human rights violations peaked under the Abacha regime, with cases of alleged state sponsored assassinations, extra-judicial killings, arbitrary arrests and detentions, and general high handedness by the state. As such, most of the human rights violations recorded herein occurred under military regimes.

Reference 331 - 0.01% Coverage

• The solution to abandoned property problems. • Military rule and democracy. • Human rights violations consequent on i-iv and • Any other related issues.

5.7 The methodology adopted to unravel human rights

Reference 332 - 0.01% Coverage

basis of its data. Data sources include newspapers and magazines, annual reports of government and non-governmental organizations, and informal discussions held with officials of some human rights organizations in the region. For each case, information was obtained about the name and age of individuals involved, the date and place(s) where it occurred,

Reference 333 - 0.01% Coverage

official/institutions involved, and a brief details of the incident. A table is presented to give a graphic illustration of nature, type and extent of those human rights violations. The documentation sources relied upon include the annual publication and reports of organizations like the Civil Liberties Organization (CLO), Committee for the Defence of Human Rights (CDHR), Empowerment and Action Research Centre (EMPARC), and the Constitutional Rights Project (CRP).

Reference 334 - 0.01% Coverage

rule in Nigeria as military decrees often empower the state and its security agencies to detain citizens without trial in violation of their fundamental human rights. While all military regimes in Nigeria share this characteristic, the most bizarre of such was under the Abacha regime. Three hundred and eighty-nine (389) cases of such rights violations were recorded from 1966 to May 1999 in South-western Nigeria, a list which is by no means exhaustive. Some of it was

Reference 335 - 0.03% Coverage

South-Western Nigeria also subjected law-abiding citizens to inhuman treatment and extortion. Policemen at check points usually take the law into their hands as they accost citizens at random demanding to search their bags. Those who dare refuse are mercilessly beaten or threatened with being shot. A case will suffice in this regard. In 1997, a citizen, Mrs Kemi Pedro was accosted at Cele Bus Stop on ApapaOshodi expressway in Lagos by the "Operation Sweep" men, a special anti-crime patrol team in Lagos. One of the soldiers in the team demanded for her bag to be searched, but she refused. For daring to refuse, the woman was flogged all over her body with horsewhip and the contents of her bag confiscated. The confiscated items include her one-month's salary, international passport, bracelets, and other personal effects. Mrs Pedro petitioned the National Human Rights Commission to cause an investigation to be conducted on the matter. She demanded for a public hearing for all victims of "Operation Sweep" misdemeanour in view of the large-scale abuse of citizens' rights, which they undertake in a regular basis. Her petition was never treated.¹¹

Reference 336 - 0.01% Coverage

An area of human rights that came under serious attack in

Reference 337 - 0.02% Coverage

of human rights violations by the state as the organisation was banned, salaries of academic staff stopped when they exercise their labour right of a strike action, and their leaders intimidated, harassed and detained.²⁰ In July 1988, the Academic Staff Union of Universities (ASUU) went on strike over salary matters. The introduction of an Elongated Salary Structure (ESS) by the state in the public service meant that in practical terms the higher pay enjoyed by academic staff over the civil service structure had been undermined without any intention by government to review the salary of academic staff

Reference 338 - 0.04% Coverage

The scope of human rights violations covered by this study is not exhaustive as there are many cases of human rights violations that are not reported, either due to the factors of poverty, ignorance, general apathy, complacency or fear of further reprisals. It is only those cases that caught the public glare through media coverage and reportage or in which the victims cry out that are documented. Even all the documentary sources of human rights violations in south western Nigeria cannot be covered. What has therefore been presented in this report is a sketch of the nature, types, and trends of human rights violations in the region.

5.38 The following are the main features and trends of human

rights violations in south western Nigeria between 1966 - May 1999: 1. The level of human rights violations in Nigeria tended to be higher under military regime especially under more vicious and repressive military administrations as witnessed under the Buhari, Babangida and Abacha regimes. 2. Almost all the cases of human rights violations covered by the study involved government agents directly or indirectly. 3. The right to life and respect for human dignity was the most widely violated aspect of human rights in south western Nigeria. For instance out, of a total of 568 cases covered by the study, those that constitute a violation of the right to life and human dignity were 513. The next to it is the social and economic rights including

Reference 339 - 0.01% Coverage

5. While the study covered cases of human rights violations in south western Nigeria, it did not cover follow up actions or activities to those violations. It did not unravel the details as to in which cases redress was sought and obtained, and cases, which were not.

Reference 340 - 0.01% Coverage

direct relationship with the observance and respect for human rights of the citizens in any political community or society. Governments and regimes that have little or no respect for the rule of law and the constitution of the country are more likely to have less respect for the rights of the citizens. As such, democratic governance in which the participation of the citizens in the political process is elicited and the

Reference 341 - 0.01% Coverage

(b). At the secondary school level, human rights and the

Reference 342 - 0.01% Coverage

3. There is need for rebuilding and reorienting national institutions and agencies like the Nigerian police, the state security service etc. to make them people - friendly and serve the interest of society rather than those of the ruling regime or government. There in need to inculcate human rights values in those institutions and for them to appreciate that national security transcends the security of individual regimes. National security imperative should include the security of the people.

Reference 343 - 0.01% Coverage

5. The state should ensure that victims of human rights violations are recompensed either

Reference 344 - 0.01% Coverage

political relations between the Igbo and other groups in the country, and which has also had serious and enduring implications for human rights in the zone is the civil war, which was fought between 1967 and 1970. The immediate cause of the war was the attempt by the Igbo-led Eastern region, which declared itself the Republic of Biafra, to secede

Reference 345 - 0.03% Coverage

as backdrop for analyzing abuses and violations of human rights in the southeast, which are defined as contraventions of relevant human rights statutes, mainly those embodied in the constitution(s) of the Federal Republic of Nigeria, Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, and other human rights statutes and conventions to which Nigeria is signatory. The tendency has been to treat most violations, including those of the rights of individuals, as variants of group persecution. The inescapable question this raises is whether the rights of individual Igbos were violated simply because they were Igbo. While the structural discrimination suffered by Ndigbo who live outside their home states (as 'non-indigenes'), as well as the bitter experiences of victims of the pogrom, civil war and (anti-Igbo) riots in the northern parts of the country may suggest that this was the case, they have to be balanced with the deprivations and violations suffered by individual Ndigbo in the southeast and elsewhere as a result of

Reference 346 - 0.01% Coverage

police brutality, military authoritarianism, and other systemic factors. For example, the unlawful arrest and detention of activist Ndigbo involved in the long-drawn battle against military dictatorship by prodemocracy and human rights movements had little to do with the fact that the activists were Igbo.

Reference 347 - 0.02% Coverage

individual violations being instances of targetted group persecution, human rights violations in the southeast fell into two major categories: violations of individual rights and violations of group rights. The latter basically had to do with equity and justice, and the rights that accrue to Ndigbo as (majority) members of the Nigerian federation, which were violated by what were perceived to be systemic deprivations, neglect, marginalization and discrimination against Ndigbo in the post-civil war power configuration and competition for scarce national resources. The major sources of violations of individual rights, on the other hand, included systemic discrimination against 'non-indigenes' by 'indigenes', prolonged authoritarian military rule, occasioned by repression, excessive use and abuse of power, and lack of respect for human rights by security and law enforcement agencies.

Reference 348 - 0.01% Coverage

follows. In the next section, we critically discuss the methodology of the investigations of human rights violations in the South-East zone. This is followed by an analysis of the background and context of violations and then a detailed examination of the causes, nature and categories of gross violations. The final section presents the conclusion and recommendations.

Reference 349 - 0.04% Coverage

Human Rights Violations Investigation Commission to ascertain or establish the causes, nature and extent of all gross violations of human rights committed in the southeast zone between January 15 1966 and May 28 1999. Dr Nwankwo's investigations and findings are contained in a two-volume report: volume one covers the period between 1966 and 1980, while volume two covers that between 1980 and 1999. The report relies heavily on secondary data on the Igbo and its relations with the rest of Nigeria from colonial records, anthropological accounts by Simon Ottenberg, Daryle Forde and G.I. Jones, extant works on Nigeria's political history, especially those by Alexander Madiebo, and Emma Okocha on the civil war, accounts of contemporary political events in British and Nigerian newspapers and magazines, the Report of the GCM Onyuke Panel of Enquiry into the Massacre of the Ndigbo in Northern Nigeria, 1966, Report

of the International Commission of Jurists and the Report of the International Commission on Genocide in Biafra, and annual reports and other publications of the Civil Liberties Organization (CLO), Committee for the Defence of Human Rights (CDHR) and the Constitution Rights Project (CRP). Primary data was obtained from interviews with various categories of Ndigbo, personal accounts of those who witnessed and/or were victims of the 1966 pogrom, civil war, and riots in which the Igbo were major targets, and the qualitative analytical insights of the author, who is himself a notable human rights activist and Ndigbo leader, public affairs commentator, and publisher.

Reference 350 - 0.03% Coverage

conception (or misconception) of Ndigbo as a homogeneous group, and the Nigeria-wide context within which the investigations were conducted. These conceptions engender the essentially globalist view of human rights that draws examples of human rights violations heavily from the north and southwest rather than the southeast. Again, while this approach makes it easier to prove systemic discrimination against Ndigbo in Nigeria, it underplays the violations in the Igbo homeland itself, which (from the few cases in the report) suggest that at the level of individual rights at least, Ndigbo are subject to the same threats and violations of human rights as Nigerians elsewhere. A corollary of this is that the report is thin on critical details about the southeast zone. We are, for example, unable to see the specific complexion of human rights problems in the zone and also whatever varieties might exist among its constituent states. Moreover, no consideration is given to sub-group diversity and conflicts, such as that between the north and south, and between the Wawa and others in the old Anambra state in the Second Republic, which gave rise to the allegations and perceptions of marginalization and domination that underlay demands for more states and local government areas in the zone.

Reference 351 - 0.03% Coverage

origins of the Nigerian state and the role of the Igbo as one of the three dominant ethnic groups and first-order claimants to power in the country. As far as Ndigbo are concerned, the state inherited from the British colonizers was flawed not only on the ground that it was imposed, but also that it was designed to privilege the conservative Northern dominant classes as power holders, as evidenced by the alleged manipulation of the 1952 census exercise to give the Northern region the politically decisive population edge (the region had 55.3 per cent of the country's total population), and of the 1959 general elections in favour of the region's political party. The manipulation of population figures, involving the under-counting of Ndigbo and Southern populations, which continued in 1973 and 1991 when fresh census exercises were conducted, amounted to a violation of human rights because (i) groups and persons are thereby reduced to a status of non-existence; and (ii)

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abrogated the federal system and established a unitary system in its place and seemed to confirm northern fears of Igbo "take over" of the federation, provided the alibi the northern conservatives needed to unleash what most Ndigbo believe were long conceived and well orchestrated plans to annihilate them. This began with spontaneous riots in which Ndigbo were the target, and was followed by the so-called Northern counter-coup of July 1966 whose immediate goal was to avenge the killings of Northerners in the January coup, and finally a full-scale pogrom against Ndigbo that lasted till September 1966. Ndigbo and other Easterners were forced to relocate to the safety of the Eastern region. It was the deterioration of this situation, especially the failure of the new federal military government headed by General Yakubu Gowon to halt the massacre of Igbos, that led to the declaration of the sovereign state of Biafra and civil

war. As was pointed out earlier on, the civil war marked the critical dividing line in the human rights history of the southeast zone in that the war and its aftermath became the backdrop for discussing human rights issues.

Reference 353 - 0.01% Coverage

HUMAN RIGHTS VIOLATIONS 6.15

The human rights violations in the southeast zone will be

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violated either belonged to pro-democracy and human rights organizations that were in the forefront of the long-drawn struggle to oust military rule, or were involved in action that was calculated to thwart military takeover. To the latter category belonged Senators Polycarp Nwite, Okoroafor Amadi and four others who were arrested and detained for issuing a statement signed by then Senate President

Reference 355 - 0.01% Coverage

arrested for attempting to post a complaint to the African Human Rights Commission against the trial, conviction and sentencing to death of Ken Saro-Wiwa and 8 other Ogoni minority rights activists;

Reference 356 - 0.02% Coverage

The key to unraveling the nature and import of human rights violations in the southeast zone in the period 1966-1999 lies in the pervasive feelings of Ndigbo that they were hated and persecuted, and that beginning from the end of the civil war in 1970, they were being punished through marginalization and discrimination for the sins of the civil war. Two factors served to aggravate these feelings. First was prolonged rule by unaccountable and authoritarian military governments. The Igbo fared very badly under the military because of the massive purge of Ndigbo officers and men from the armed forces, police and security agencies at the end of the civil war.

Reference 357 - 0.02% Coverage

marginalization on the part of the federal government. Roads and other infrastructure, and the seeming helplessness of the police and security agencies in protecting Ndigbo from malicious attacks in so-called religious and ethnic riots in other parts of the country have to be urgently addressed. The systemic discrimination against so-called non-indigenes and their exclusion from full citizenship, which has adversely affected the Igbo who have nearly 50 per cent of their people in 'Diaspora' has also to be urgently addressed. Finally there has to be a vigorous programme of human rights education and awareness campaign for the police, military and security forces on the one hand, and the politicians, office power holders and the masses of ordinary people on the other.

Reference 358 - 0.01% Coverage

CHAPTER SEVEN HUMAN RIGHTS VIOLATIONS IN NIGERIAN PRISONS INTRODUCTION 7.1

This chapter will highlight the gross human rights

Reference 359 - 0.01% Coverage

- Critical problems and issues relating to human rights violations; and

Reference 360 - 0.01% Coverage

CRITICAL PROBLEMS AND ISSUES RELATING TO HUMAN RIGHTS VIOLATIONS IN PRISON 7.13

Reference 361 - 0.01% Coverage

- What human rights abuses occur in prisons and under what circumstances.

Reference 362 - 0.01% Coverage

7.14 In addressing the issue of human rights violations, the

Reference 363 - 0.01% Coverage

HRVIC there are two main sources of human rights violations, namely: Violations arising from prison congestion, inadequate facilities and delay in the justice process; and violations arising from overbearing state policy and state officials, especially during the Military regimes.

Reference 364 - 0.01% Coverage

5 Overview of Human Rights Violations and Professional Hazards in Nigeria Prison Service (Being A Written Presentation of the Nigeria Prison Service At the Special Public Hearing of the HRVIC) Held on October 5, 2001 at the Women Development Centre, Abuja.

Reference 365 - 0.02% Coverage

embarked on some training on human rights standards for its officers, more effort is needed to enhance the full implementation of these standards. Corporal punishment and the use of solitary confinement and dark cells are still being practiced. Also, flogging of inmates has also being observed in some prison. More efforts need to be put in place to address the massive evidence of psychological torture. A notable picture is the squatting posture that prisoners take when speaking to prison officers or when being addressed by the officers. This has being observed to occur in all prisons within the country.

Reference 366 - 0.03% Coverage

government to address the problem of prison congestion. The then Federal Government constituted a Presidential Task Force (National Committee) on Prison Decongestion and Reforms. This Committee was once chaired by the Minister of Justice and Attorney General of the Federation. Other members of the Committee were representatives of the Presidency (Secretary of the Prerogative of Mercy), the Ministry of Internal Affairs, the Prisons Service, National Human Rights Commission, and NGOs. The Committee set up sub-committees, approved criteria for release of prisoners and visited all prison formations in the country for on-the-spot verification of data. The government also empowered²⁴ the various State Criminal Justice Committees to move court sittings into prison yards and facilitate speedy trial. Through this exercise, over 8,000 prisoners were released. It is important to state the impact of this exercise was not sustained and thus by May 2000, the prison population rose beyond its 1998 and 1999 figures.

Reference 367 - 0.02% Coverage

these prisons, awaiting trial persons far outstrip the prison capacity itself. Given that most of these awaiting trials stay for long periods without trial, we make bold to say that this represents a violation of Human Rights of a type that does not conform to our democratic aspirations. Above all, they make the current assessment of the reform potentials of the prison difficult to evaluate. It is illustrative to note that in Owerri prison, for instance, out of 1,045 inmates, only 100 are convicted, while the remaining 945 are unconvicted. In Ikoyi, only 144 out of 1,661 prisoners were convicted.

Reference 368 - 0.01% Coverage

government and NGOs and can be achieved through some of the following activities: Strengthening the prison monitoring activities of the National Human Rights Commission and the appointment of a prison ombudsman. In addition, this should include the establishment of state and community-based prison monitoring team made up of representatives of NGOs, Professional bodies (such as the Nigeria Medical Association and Nigeria Bar Association), National Human Rights Commission, Religious bodies etc.

Reference 369 - 0.01% Coverage

Provision of adequate vehicles for conveying prisoners to courts and training of prison escort officers on human rights.

Reference 370 - 0.01% Coverage

Further development of the NPS internal human rights monitoring mechanisms.

Reference 371 - 0.01% Coverage

practices, human rights standards and treatment of vulnerable prisoners. 7.72 ■

Reference 372 - 0.01% Coverage

Training on international and regional human rights standards; Gender-sensitivity training for criminal justice agents; Training on prevention of torture and trauma counseling for health workers; Training on prevention of HIV/AIDs (including the use of peer group education)

Reference 373 - 0.01% Coverage

Criminal Justice System. The problems militating against effective operations of the Service have been enumerated here and elsewhere.³⁷ The future focus, which is highlighted in this report, is the need to establish a strong human monitoring and investigation oversight, facilitate multi-agency collaboration, and the practical implementation of human rights standards in the treatment of prisoners and detainees.

Reference 374 - 0.01% Coverage

CHAPTER EIGHT HUMAN RIGHTS VIOLATIONS BY THE NIGERIA POLICE

Reference 375 - 0.02% Coverage

The focus of this chapter is on patterns of human rights violation by the police in Nigeria between January 15, 1966 and May 28, 1999, as well as an examination of the structural and institutional factors that aided police abuse of human rights within the period. The chapter is divided into five sections. Section one examines briefly the origin of the police in Nigeria. Section two analyses the impact of military rule on the Nigeria Police Force. Section three presents the patterns of police violations of human rights in Nigeria. Section four looks at institutional factors that aid police violations of human rights. Finally, section five proposes some recommendations.

Reference 376 - 0.01% Coverage

38 See Tamuno 1971; Nwankwo et al, 1994; Chukwuma & Ibidapo Obe 1995. 39 I.C. Chukwuma and A. Ibidapo-Obe (1995) (Eds.), *Law Enforcement and Human Rights in Nigeria*, Lagos: Civil Liberties Organization, p.66.

Reference 377 - 0.01% Coverage

40 R. Reiner (2000) *The Politics of the Police*, Oxford: Oxford University Press, pp.16-18. 41 H. Williams, (1983) quoted in I. Chukwuma (1998) "Police Powers and Human Rights in

Reference 378 - 0.01% Coverage

the police were alienated from the communities they were recruited to police. They were not established as agents for promoting rule of law, human rights or for delivering social services. The colonial police forces were therefore used in punitive expeditions to further the goal of colonial annexation of territories,⁴⁷ to suppress opposition against colonial exploitation.⁴⁸

Reference 379 - 0.01% Coverage

49 A. Nweze and L. S. Wapmuk (1989) "The Police in Nigerian Society" in B. J. Takaya, *Security and Human Rights in Nigeria*, Jos: Centre for Development Studies, p. 68.
50 C. Nwankwo et al. (1993) *Human Rights Practices in the Nigerian Police*, Lagos: Constitutional Rights Project, p.16.

Reference 380 - 0.01% Coverage

51 Ibid. 52 See I.C. Chukwuma (1995) "Police Powers and Human Rights in Nigeria" *Law Enforcement Review*, January – March 1998: 36.

Reference 381 - 0.01% Coverage

with respect to human rights was that they performed legislative, executive and judicial functions. According to Asemota (1993):

Reference 382 - 0.01% Coverage

enter government on their volition. That they were drafted into it.”⁶¹ They did not seem, however, to have appreciated the extent of damage this involvement was to inflict on their role as police personnel and the difficulty they were to have in relating to members of the public, especially organized civil society groups such as students, labour and human rights organizations. This much was admitted by then Inspector-General of the Nigeria Police, Alhaji Ibrahim Coomassie, when he stated in an acceptance speech for an honorary doctorate

Reference 383 - 0.01% Coverage

PATTERNS OF HUMAN RIGHTS ABUSE BY THE POLICE 8.21

Reference 384 - 0.01% Coverage

of human rights within the period under review is not only countrywide in its manifestation but also institutional in its execution. The typologies are analyzed below:

63 The Sunday Punch, November 22, 1992. 64 M.A. Ajomo and I.E. Okagbue (eds.) (1991) Human Rights and the Administration of Criminal Justice in

Nigeria, Lagos: NIALS, p.98; O. C. Eze (1993) “The Police, Rule of Law and Human Rights” in T. N. Ta Tamuno, “Policing Nigeria: Yesterday, Today and Tomorrow, Lagos: Malthouse Press Limited, p.417.

Reference 385 - 0.01% Coverage

unnecessary restraint in the course of arrest, except by order of court or reasonable apprehension of violence or attempt to escape is outlawed under section 4 of the CPA. Again there is a disparity between what the law says and the actual police practice. A report on Human Rights Practices by the Nigerian Police, published by the Constitutional Rights Project (CRP) in 1993, established that the police could do anything in the course of arresting a suspect. Even relatives

Reference 386 - 0.01% Coverage

67 C. Nwankwo et al. (1993) Human Rights Practices in the Nigerian Police, Lagos: Constitutional Rights Project, p. 45.

Reference 387 - 0.01% Coverage

69 M.A. Ikhariale (1995), “ Justice in the Accusation: A constitutional Evaluation of the Nigerian Criminal Justice System” in I. Chukwuma and A. Ibidapo-Obe, Law Enforcement and Human Rights in Nigeria, Lagos: Civil Liberties Organization, p. 20.

70 O. Onagoruwa, (1995) “ Delays in the Criminal Justice System: The Propriety of the Holden Charge Phenomenon”, in I.Chukwuma and A. Ibidapo-Ode (eds.) Law Enforcement and Human Rights in Nigeria, Lagos: Civil Liberties Organization, p. 32

Reference 388 - 0.01% Coverage

76 A. Ibidapo-Obe (1995) “Police Brutality: Dimensions and Control in Nigeria” in I. Chukwuma and A. Ibidapo-Obe, Law Enforcement and Human Rights in Nigeria, Lagos: Civil Liberties Organization, p. 45

Reference 389 - 0.03% Coverage

INSTITUTIONAL FACTORS THAT AID POLICE VIOLATION OF HUMAN RIGHTS 8.39

An examination of patterns of police violations of human rights in Nigeria would not be complete without looking at the institutional factors that aided or tolerated the commission of such abuses. Even though police authorities often deny or conceal their collusion in the commission of certain categories of human rights violations by their operatives, the logistics of carrying out some of these acts, make such insinuations unacceptable.⁸⁹ Investigations have shown that for a suspect to be arrested, detained, tortured or killed, it involves at least, the person who committed the act and the superior officer who ordered, consented or tolerated it.⁹⁰ According to a publication of Amnesty International: ...Because the incidents of torture and extra-judicial killings are often connected to a police station, division or department, which is hierarchically structured, their execution is likely to

Reference 390 - 0.01% Coverage

8.40 The institutional factors that aid police violations of human rights include: ☐ Character of Laws in our Society ☐ Nature, Extent and Scope of Police/Citizen Contact ☐ Police Training and Educational Qualification ☐ Police Code of Conduct and Discipline ☐ Police Corruption ☐ Police Accountability

8.31 An analysis of these factors is critical to the understanding of patterns of police violation of human rights in the country.

Reference 391 - 0.02% Coverage

which precipitate human rights violation by the police tend to be higher in societies where the police focuses on law enforcement alone than in other societies where they combine law enforcement with social welfare services. Except the police see themselves as "part of the social fabric of a community, they will be perceived as an alien force, and, unless they are clearly visible in their roles of helping people in trouble, they will be seen as a mercenary army of enforcers."^v In Nigeria, the "acute shortage of personnel has reduced the police to crime fighters [which they do very ineffectively due to qualitative and inadequacy of men, material and money] to the detriment of the diversification of police functions found in western societies."^{vi} According to Alemika (1988):

Reference 392 - 0.01% Coverage

categories of policemen in Nigeria.^{viii} None has emphasis on human rights. Police authorities, however, argue that instructions on the rights of an accused are given in their course on Nigerian criminal law. Constables, who constitute over eighty percent of the force, undergo six months basic training in the course of their enlistment.^{ix}

Reference 393 - 0.02% Coverage

who feels wronged by another should do,⁹² conduct of police officers in their official duties,⁹³ prohibition of receiving of presents (except from close personal friends or relatives),⁹⁴ petition writing,⁹⁵ to institution of legal proceedings in their personal capacities. There is, however, no mention of the requirements of upholding the human rights of all persons they come in contact with,⁹⁶ guidelines on the use of force,⁹⁷ maintenance of the confidentiality of certain information in their possession,⁹⁸ the prohibition of the use of torture in their work and the full protection of the health of persons in their custody, as provided in the Code of Conduct for Law Enforcement officials.

Reference 394 - 0.01% Coverage

have also not been seen in practice. As the studies summarized in section three of this chapter show, an average Nigerian policeman has no respect for the dignity of individuals he comes in contact with while on and off duty. The situation is not helped by the fact that the Nigerian Police Force is not particularly known for disciplining its officers accused of human rights violation. The Police Act did not also specify disciplinary processes to be followed where human rights abuses are alleged against police officers.⁹⁹

Reference 395 - 0.03% Coverage

disciplinary procedure (Orderly Room Trial) to investigate allegations of use of excessive force against their personnel. But these boards do not often result in the disciplining of police officers that violate human rights. This practice violates the United Nations Basic Principles on the use of Force and Firearms by Law Enforcement officials. Principle 22 Stipulates that persons affected by the use of force and firearms or their legal representatives shall have access to an independent process, including a judicial review.¹⁰⁰ Internal boards of inquiry by the police in Nigeria are a typical strategy to sweep events under the carpet as they create the impression that police authorities are doing something about human rights abuses by their men, whereas in actual fact, officers guilty of these atrocities are walking the streets and breathing freely as freemen.

99 B. Nowrojee (1992), *The Nigerian Police Force: A Culture of Impunity*, New York: Lawyers Committee for Human Rights, p. 11.

Reference 396 - 0.02% Coverage

raised the question of an accountability structure for the police when he asked, "Who will guard the guardians?" Historically, the police have been largely left alone to keep their house in order, with some external oversight administered by the courts and government. This simple approach has now been found wanting because of widespread citizens' dissatisfaction with the internal disciplinary procedures of police departments. Numerous studies and inquiries have also demonstrated the vulnerability of the police to abuse of human rights, corruption and misconduct.

Reference 397 - 0.01% Coverage

The following reform measures are recommended in order to enhance police respect for human rights in Nigeria.

Reference 398 - 0.01% Coverage

given due attention with a view to reducing the institutional sources of police violation of human rights.

Reference 399 - 0.01% Coverage

5. Workshops, seminars, lectures for the reorientation of police officers should be organized at state and divisional command levels, to enable them acquire proper orientation for policing a free and democratic society. The curriculum of police colleges should be enlarged to adequately deal with human rights education, international codes and ethics for law enforcement officers, etc.

Reference 400 - 0.01% Coverage

8. Refresher courses should be provided for all levels of the police with a view to sharpening the professional skill of officers and to enable them understand the changes and dynamics in the country's political, social and economic spheres. The courses should also aim at ensuring that police are properly oriented to promote good relationships with the public, and protect human rights and rule of law in the country.

Reference 401 - 0.01% Coverage

effectiveness, civility and accountability, and reduce police violation of human rights. Some of such initiatives are presented below:

Reference 402 - 0.01% Coverage

principles, and the nation's constitutional provisions on human rights, law enforcement, criminal justice administration and treatment of offenders.

Reference 403 - 0.02% Coverage

associations (especially commercial vehicle drivers), religious and community leaders, retired police officers and a serving police officer within the command. The Board should have a civilian chairman. The functions of the Board should include: A. To promote effective police services B. To promote respect for human rights and rule of law by police C. To promote police accountability to the citizens D. To promote and mobilize public support for the police E. To organize public enlightenment programmes for police and citizens on police powers and functions and citizens' concerns for public security, personal safety and human rights.

Reference 404 - 0.03% Coverage

5. See, Ibibia L. Worika, "A Report on the Investigation of Human Rights violations in the South- South Zone, 1966-1999: Community/Group Deprivations in Rivers State". Report of Research Commissioned by the Centre for the Advanced Social Sciences (CASS) for the South South Zone Research.
6. Human Rights Watch, *The Price of Oil*. (New York: Human Rights Watch, 1999), p. 70. 7. Human Rights Watch, *Ibid*, p. 132. 8. Human Rights Watch, *Ibid*, p. 132-133. 9. Human Rights Watch, *Ibid*, p. 59. 10. Human Rights Watch, *Ibid*, p. 70. 11. Human Rights Watch, *Ibid*, p. 62. 12. Human Rights Watch, *Ibid*, p. 70.
1. see, Human Rights Practices in Nigeria, 1996, p.7. 2. Civil Liberties Organisation (CLO), Annual Report, 1996, p.11. 3. Civil Liberties Organisation (CLO), Annual Report 1996, p.46. 4. See, Civil Liberties Organisation (CLO) Annual Report, 1998, p. 46-50.
5. See, the submission of Afenifere to the Human Rights Violations and Investigation Commission, 2001, pp. 9-10.
6. Human Rights Practices in Nigeria, p. 14. 7. See, *Human Rights in Retreat*, A publication of the Civil Liberties Organisation, 1993, p.33. 8. See, *Human Rights in Retreat*, A publication of the Civil Liberties Organisation, 1993, p.33. 11. See, CLO Annual Report, 1997, p.22.

Reference 405 - 0.01% Coverage

12 . CLO Annual Report, 1995. 13 . see, CLO Annual Report, 1995, p. 33. 14 . See, Human Rights Practices, 1996, p. 73. 15 . See, CDHR Annual Report, 1995, p. 96. 16. See, CDHR Annual Report, 1996, p.126. 17 . See, CLO Annual Reports, 1995, p.52.

Reference 406 - 0.02% Coverage

1 See, Human Rights Practices in Nigeria, 1996, p.7. 2 Civil Liberties Organisation (CLO), Annual Report, 1996, p.11. 3 Civil Liberties Organisation (CLO), Annual Report 1996, p.46. 4 See, Civil Liberties Organisation (CLO) Annual Report, 1998, p. 46-50.
5 See, the submission of Afenifere to the Human Rights Violations and Investigation Commission, 2001, pp. 9-10.
6 . Human Rights Practices in Nigeria, p. 14. 7 . See, Human Rights in Retreat, A publication of the Civil Liberties Organisation, 1993, p.33. 8 . See, Human Rights in Retreat, A publication of the Civil Liberties Organisation, 1993, p.33. 11 . See, CLO Annual Report, 1997, p.22. 12 . CLO Annual Report, 1995. 13 . see, CLO Annual Report, 1995, p. 33. 14 . See, Human Rights Practices, 1996, p. 73. 15 . See, CDHR Annual Report, 1995, p. 96. 16. See, CDHR Annual Report, 1996, p.126. 17 . See, CLO Annual Reports, 1995, p.52.

Reference 407 - 0.01% Coverage

iii M. A. Ajomo and I.E. Okagbue (eds.) 1991, Human Rights and the Administration of Criminal Justice in

Reference 408 - 0.01% Coverage

ix B.J. Takaya (1989), (ed.) Security Administration and Human Rights, Jos: Centre for Development Studies, p 351. x Ibid. xi The educational qualification necessary for enlistment into the police, according to the Police Act is Secondary class four certificate.

Reference 409 - 0.01% Coverage

xiii United Nations (1993), Human Rights: A compilation of International Instruments, New York: United Nations, p. 322.

Reference 410 - 0.01% Coverage

Olusegun Obasanjo when taking over the reins of power on the 29th of May 1999, was a commitment to fight the twin evils of institutionalized corruption and human rights abuses which had characterized Nigeria's experience during the era of military rule. In apparent fulfillment of that pledge, the President, on the 4th of June 1999, inaugurated the Human Rights Violations Investigations

Reference 411 - 0.02% Coverage

Inquiry Act (Cap 447) Laws of the Federation of Nigeria 1990. Section 8 of the Act states that the Commission "shall have power to regulate its own proceedings". In the exercise of this power as well as the desire to elicit information from primary sources, the Commission decided to organize public hearings in a bid to more effectively carry out its assignment. The public hearings were of two types. First, were the Zonal Hearings which were held in six designated centres in the country's six geo-political zones and

second, were the Special Hearings. The latter were hearings organized for civil society and human rights organizations and other specialized professional groups such as the security agencies.

Reference 412 - 0.01% Coverage

Abuja Sessions. Submissions were made by the following: 1. National Human Rights Commission 2. Civil Liberties Organization. 3. Constitutional Rights Projects. 4. Centre for the Defense of Human Rights. 5. Prisoners Rehabilitation and Welfare Action. 6. The Armed Forces.

Reference 413 - 0.02% Coverage

petitions. However, as can be seen in the Table above only 40 petitions were the subject of public hearings. These petitions were those which the Commission deemed as dealing with gross violations of human rights in line with its terms of reference. However, neither the instrument setting up the Commission, nor its terms of reference, defined the concept, gross violations. The Commission therefore adopted and modified the definition used by the South African Truth and Reconciliation Commission. Violations of human rights seen as gross were thus designated as: a)

Reference 414 - 0.03% Coverage

convening the public and special hearings was the need to collate as much data as possible from primary sources i.e the direct victims of the human rights abuses being investigated. The special hearings also provided the same type of information, although from interested and informed secondary sources with in-depth knowledge and/or information on such violations. A third reason for the conduct of the hearings was that it provided a public forum for the aggrieved to air his or her grievances and for the alleged perpetrator to state his or her own side of the story. The overall intention being the hope that the face-to-face encounter between accused and accuser would provide an opportunity for reflective soul-searching, remorse, forgiveness and reconciliation. Finally it was also intended that the public hearings would provide Nigerians and indeed the world at large an opportunity to know at first hand, who did what, to whom and with what consequences.

Reference 415 - 0.01% Coverage

The petitioner prayed the Commission to recommend that all those found to have been engaged in the massive violation of the human rights of Nigerian citizens be made to pay for their sins, while all the victims of such human rights abuses be adequately compensated. The petitioner was cross-examined by the counsel to the State Security Service who canvassed the argument that the petitioner's

Reference 416 - 0.02% Coverage

national reconciliation on the basis of truth. He said the objective was to evolve a better future for the nation from its bitter past. He pointed out that those who came before the Commission on charges of violations of human rights were supposed to show sufficient remorse for their guilt so as to bring about the desired reconciliation. He noted that unfortunately, many witnesses who were accused of violations of human rights were both insincere and not remorseful. He opined that such an attitude was probably informed by the natural law of selfpreservation whereby the guilty would not admit his guilt without an assurance of forgiveness. He then expressed the hope that government would implement the recommendations of the Commission at the end of its work.

Reference 417 - 0.01% Coverage

PETITION NO. 146: MODAKEKE PROGRESSIVE UNION The petition is about the violation of the human rights of the people of Modakeke. The petitioners alleged that the right to self-determination

Reference 418 - 0.01% Coverage

PETITION NO.164: COLONEL C. P. IZUORGU The petition has to do with an alleged violation of the petitioners fundamental human rights, mental agony, truncation of a military career, dismissal from the Nigerian Army, stoppage of his salary during detention, brutalization and inhuman treatment while in custody, loss of all privileges attached to his rank and the stigma of dismissal and inability to get another job because of same.

Reference 419 - 0.01% Coverage

v) Any future investigation panels should include representatives of international and local human rights groups, to ensure that only guilty suspects are convicted.

Reference 420 - 0.02% Coverage

PETITION NO. 204: PROFESSOR J. ADEBAYO MOKUOLU The petition is about unlawful arrest, detention and violation of the fundamental human rights of the petitioner and the unlawful arrest and torture of his son, relations, and staff members. He claimed that he was arrested on June 4, 1994 by two armed mobile policemen, at gunpoint, while returning from the Obasanjo Farm. They refused to disclose to him why he was being arrested. At Zone 2 police station, Onikan, Lagos Island, he was subjected to all forms of inhuman treatment with no room to sleep, no bed and no official feeding. He spent nine agonizing days before he was released.

Reference 421 - 0.01% Coverage

iv) That he should be paid financial compensation; and v) That the Federal Government, for the injustice and violation of his human rights, should write a letter of apology to him.

Reference 422 - 0.01% Coverage

The Commission should unearth the causes of human rights abuses in Nigeria;

ii) The violators of human rights should be charged and if convicted should face appropriate punishment; and,

Reference 423 - 0.01% Coverage

ii) Trial of Major Mumuni and his team, including Sergeant Rogers who handcuffed and leg-chained them and made them undergo such agony in Jos, for human rights abuses;

Reference 424 - 0.01% Coverage

PETITION NO. 834: MAJOR-GENERAL ABDULKAREEM ADISA This is a case of violation of human rights, unjust arrest, detention, trial and the conviction of the petitioner. The petitioner claimed that Major Adamu Argungu, acting on the instruction of General Sani Abacha on the allegation that they planned to overthrow his government, arrested him on December 21, 1998.

Reference 425 - 0.01% Coverage

Investigate the inhuman treatment and breaches on his fundamental human rights;

Reference 426 - 0.02% Coverage

The Commission recalled that the matter was partly heard at the Enugu sitting. It was told that the Ghana High Commission had replied to a letter written to it and had advised that the matter was a human rights case and should be treated as such. At that juncture, counsel for the petitioner reminded the Commission that the Nigerian Immigration Service had decided and advised that the petitioner be treated as a refugee seeking political asylum. He listed the various sums of money in different currencies the immigration claimed it released along with the petitioner. He added that the money was with the SSS because its staff, Messrs. Orji and Agbo collected the money.

Reference 427 - 0.01% Coverage

OLORUNKOSEBI AND ALHAJI RASHIDI A. SALAMI. The petition is about gross violation of human rights arising from pervasion of justice, misapplication of judicial power and extreme abuse of office in the desperate bid to cover up the assassination of late Chief Amuda Olorunkosebi – the Asipa of Oyo by the military regimes of Oyo State under Colonels Samuel Nwosu and Usman Mohammed.

Reference 428 - 0.01% Coverage

The petitioner is seeking relief from the Commission to investigate the human rights violations suffered by her husband, which led to his death and also recommend compensation for the family. She also pleaded that Col. E. F. Zamani who ejected her and her children from their residence should be prosecuted for tormenting them and carrying away their belongings. She also wants the Commission to ensure that their property carried away be returned to them.

Reference 429 - 0.01% Coverage

PETITION: NO. 696; PETITIONER: LT.-GENERAL OLADIPO DIYA The petition is about an alleged set – up for a phantom coup plot; assault and battery; illegal arrest, detention and imprisonment of the petitioner; physical and psychological torture; abuse of fundamental human rights; theft of his property and property of his wives and

Reference 430 - 0.01% Coverage

The Commission observed that the matter was earlier reported to the police but was poorly investigated due to the human rights posture of the military government. The Commission directed that the InspectorGeneral of Police should conduct a fresh investigation into the matter. It also ordered that the Commission should be duly informed about the outcome of the investigation.

Reference 431 - 0.01% Coverage

PETITION NO 784: PETITIONER: CHIEF SAM EGBELE The petition was about the human rights violations of the people of the Niger-Delta by successive governments. He therefore prayed for the rehabilitation of the area and the payment of reparations.

Reference 432 - 0.01% Coverage

SUMMARY/CONCLUSION The Human Rights Violations Investigation Commission sat in Port Harcourt zone between the 5th day of January, 2001 and 2nd day of February, 2001, and heard complaints from Nigerians on violations of their fundamental human rights by the military/government officials and organizations such as the Rivers State Task Force on Internal Security.

Reference 433 - 0.01% Coverage

our security agents on the need to respect human rights as most of the security agents see themselves as above the law.

Reference 434 - 0.01% Coverage

Lagos and Port Harcourt, all alleged perpetrators blatantly denied any human rights abuses alleged by their victims. Because of this impasse, Justice Oputa observed, "it has not been easy to extract from those alleged perpetrators that measure of remorse and plea for forgiveness on which genuine reconciliation can be posited."

Reference 435 - 0.02% Coverage

tagged it "the Ogoni Peace Accord". The New Nigerian of February 16, 2001 in its editorial observed: "The Peace Accord signed by the warring factions in Ogoniland will go down in the socio-political development and history of our country as one of the landmark achievements of the Human Rights Violations Investigations Commission". That is the editorial and it continued: "The New Nigerian is enamoured by the series of warm embraces, huggings and back-slappings which permeated the signing proceedings of the Peace Treaty. They were symbolic expressions of the grace and magnanimity of a sober people willing to forget a bitter past and forge ahead."

Reference 436 - 0.01% Coverage

along has been: "From our bitter past let us forge ahead to build a better future." He said, "let us now, with the crossbow provided by the Human Rights Violations Investigations Commission, shoot each of this albatross and move freely in the interest of the peace and unity of Nigeria and the survival of our nascent democracy."

Reference 437 - 0.02% Coverage

Counsel for Mohammed Abacha submitted that the petition was not within the terms of reference of the Commission. He added that the petitioner was requesting for reliefs that could only be obtained from the regular courts. He added that the petition, if heard by the Commission, would amount to an abuse of the judicial process. He went on to say that the matter was sub judice because the same issues in the petition

were also before a Federal High Court in the country. He argued that the 1999 Constitution should not be utilized as legislation in this matter because the alleged abuse of the petitioner's human rights occurred before that law came into force. In view of the submissions, he requested that the petition be struck out and dismissed.

Reference 438 - 0.03% Coverage

The counsel further submitted that the claims in the two cases were also not the same, for while the claim in the High Court case was substantially monetary, those in respect of the petition were the demand for the reprimand of the accused for his detention and torture. Furthermore, the counsel stated that the Commission was just an investigating body, while the court was an adjudicator and therefore the two bodies were not the same. He went on to say that the terms of reference of the Commission and the period given to it to investigate issues of human rights violations gave it the jurisdiction to hear the case. He also pointed out that based on a Supreme Court ruling to the effect that erroneous reliance on a wrong law could not inflict a fatal damage to a submission, he argued that the erroneous reliance or reference to the 1999 Constitution by his client in his petition did no fatal damage to his case. The counsel also opined that his client's action could not be an abuse of judicial process because the parties in the two cases were not the same. He then concluded that the application for preliminary objection was baseless and should therefore be struck out.

Reference 439 - 0.03% Coverage

The original petition of the first witness, Abubakar Sadiq, and the amended petition were tendered and marked Exhibits 1 and 2 respectively. The 1st witness affirmed the contents of Exhibit 2. He stated that his petition had to do with abduction, illegal detention, and denial of fundamental human rights and torture. He added that he was teargassed, denied food and terribly tortured. He disclosed that he was detained both in Abuja and Lagos and moved about in handcuffs. He narrated how he was made to appear before the Task Force on Financial Crimes in Lagos. He recalled that though efforts were made and money paid to facilitate his release after being accused of financial malpractices at Selcon Tenary Ltd he was never released even after those efforts. He stressed the severity of the torture experience he went through and added that he was later treated for the injuries he received. He prayed that Mohammed Abacha, Hamza El-Mustapha and the Federal Government be reprimanded for the action. He also wanted Mohammed Abacha to pay him the sum of N60 million for false accusation. He also sought for adequate compensation for the ordeal he went through.

Reference 440 - 0.01% Coverage

aid reconciliation, the case could still be heard as listed. It was explained that the case was two-pronged and that petitioners were interested on the aspect that dealt with the violation of the human rights of Zango Kataf by agencies of the Federal Government of Nigeria. He added that the other party was making impracticable demands to the matter in the area in question, and that has informed the request to hear the case.

Reference 441 - 0.01% Coverage

organization, complained on his behalf, in February 1993, to the African Commission on Human and People's Rights (ACHPR) on the violation of his human rights. He said that the ACHPR held a hearing at

which the FMG failed to appear, although it was served. A letter from the ACHPR to Chief G. O. K. Ajayi, dated 11/10/99, was tendered and marked exhibit 53.

Reference 442 - 0.04% Coverage

At that juncture, a member of the Commission opined that the issue of where to locate the headquarters of the proposed chiefdom should not warrant an adjournment because it could be taken care of in the written addresses of counsels. The Chairman remarked that the decision on the location of a new headquarters was that of government at the end of the day and not that of the counsel. Another member recalled that in the past, influential citizens determined the sitting of the capitals of newly created states and local government areas. He said that in the present democratic dispensation, however, in the sitting of new headquarters, the sensibilities of the citizens should be taken into consideration to avoid creating new problems. Counsel for the Bauchi State Government opined that the sitting of a new headquarters was not an issue bordering on fundamental human rights.

The petitioners filed an addendum to their petition, where they said that all other issues, except one, were being resolved. However the only one issue left was the centre of all the other issues. The counsel for the petitioners thus requested to tender all documents and address the Commission later. The petition titled "Memo on Human Rights" and the addendum were tendered from the bar and marked Exhibit 1 and Exhibit 2, respectively. Four other documents were tendered and

Reference 443 - 0.02% Coverage

Cross-examined by counsel to Zakari Biu, the witness said his company reported the disappearance of Mr. Kaltho to the police and Human Rights Commission through their representative in Kaduna, Mr. Timothy Bonnet. He agreed that Mr. Kaltho's wife had once expressed displeasure over the nonchalant way the company was handling the disappearance of her husband. He said when all efforts to trace the whereabouts of Mr. Kaltho failed; the company started publishing it in its publications in June 1997. He said the public notification of the detention of Kunle Ajibade in the publications of the company immediately he was arrested was because the arrest was effected on the company's premises and it was clear that he was taken away by security agents. He said the conduct of Mr. Biu gave him the impression that he (Biu) might have been involved in Mr. Kaltho's arrest.

Reference 444 - 0.01% Coverage

At this juncture, the Chairman pointed out that although the Commission would not hesitate to recommend compensation to victims of human rights violations where necessary, it was a different kettle of fish for the Government to accept and effect the compensation. He pointed out that the National Assembly would have to be involved for the Government to be able to effect such compensation. He said petitioners would have to bear these facts in

Reference 445 - 0.02% Coverage

PETITION NO. HRVIC 180: PROF. OLEKA K. UDEALA AND MRS. GRACE UDEALA The petition had to do with the attempted assassination of Professor and Mrs. Udeala, and the violation of the human rights of his family. The Professor said he was persecuted by Professor Umaru Gomwalk, former Vice-Chancellor of the University of Nigeria Nsukka; and Col. Lucky Torrey, then Enugu State Military Administrator. His official lodge was allegedly invaded, and an attempt on their lives was made. He added that he was illegally removed as Vice-Chancellor and denied his salaries and other entitlements due to him. He prayed

as follows: a) Those who attempted to assassinate him should be called to order and disciplined in accordance with the law,

Reference 446 - 0.02% Coverage

by the petitioner include: condemning the action and declaring that the trial and sentence of the Tribunal which sentenced him, and the Supreme Military Council that endorsed, it was repugnant to the rule of natural justice, equity and good conscience; and a gross violation of fundamental human rights of the deceased. A compensation of one billion Naira from the Federal Government is also being asked for. The respondent on his part explained that the deceased violated a decree with stiff penalty, and that retroactive decrees were in vogue then. The Commission demanded for the composition and proceedings of the minutes of the Supreme Military Council on the case for additional information. General Mohammadu Buhari was also expected to appear and shed more light.

Reference 447 - 0.02% Coverage

COMMUNITY The petition was about the alleged violation of the human rights of the Okpoama community of Brass Local Government Area (LAG), Bayelsa State by the Armed Forces of the Federal Republic of Nigeria on January 4th 1999. The background was a community conflict between Okpaoma/Ewoama and Twon communities which occurred on 3 August 1998. The Armed Forces personnel guarding Agip installations were said to have attacked and devastated Okpaoma town, allegedly in support of the Bayelsa State Government, capitalising on the sour relationship between the rival communities. Agip Oil Company was accused of supporting the attack and providing logistical support to the soldiers. Agip Oil denied involvement in the attack on the communities.

Reference 448 - 0.02% Coverage

PETITION NO. 474: PETITIONER: TIM AKPAREVA This petition was filed by the National Association of Sea Dogs, alleging human rights abuses and torture to their members in Enugu and Port Harcourt. It cites the example of Ifeanyi Onochie who was arrested and detained along with others for eleven and half months. Other members in Port Harcourt were said to have been detained, tortured and flogged with horse whips, and their names were published in The Guardian newspapers. They were later taken to the Miscellaneous Offences Tribunal where they were discharged and acquitted, only to be re-arrested and arraigned before a High Court in Port Harcourt. The petitioner testified that the organization was

Reference 449 - 0.01% Coverage

The Middle Belt petition was about marginalization. It stated that there was collective human rights abuses and dehumanizing treatment meted out to the people of the area. It added that Middle

Reference 450 - 0.01% Coverage

June 2001 with a total number of 112 petitions listed for hearing. This number excludes the special hearings with relevant government institutions and Commission's researchers. The second Abuja sitting was programmed to end on the 31st of July, 2001 and also to signal the end of the Commission's public hearings of petitions relating to the gross violation of Human Rights committed in Nigeria between January, 1966 and May 1999.

Reference 451 - 0.03% Coverage

PETITION NO 654: PETITIONER: CHIEF YOMI TOKOYA FACTS: The petitioner filed a petition dated 22/7/99 alleging that he was unlawfully arrested, detained, tortured and thoroughly humiliated by some former and serving public officers/soldiers under the defunct late General Sani Abacha regime in connection with the alleged coup of December, 1997. He further alleged that his properties were in the process looted and vandalised while the sum of two thousand naira was stolen from the booth of his car. The petitioner specifically named Lt. Gen. Ishaya R. Bamaiyi, Air-Vice Marshal Idi Musa, Majors-General Patrick Aziza, and Bashir Magashi, Alhaji Ismaila Gwarzo, Ambassador Zakari Ibrahim, Brig-Gen Ibrahim Sabo, Col. Frank Omenka, Majors Hamza Al-Mustapha and Adamu Argungu, Alhaji Mohammed Doba, Captain Laman, Lt. Ibrahim Lt. Sabiu Dagari, Sgt. Barnabas Jabilla a.k.a Sgt. Rogers, L/c. Gani Mohammed and W/O Hassan Baba as being collectively and individually responsible for the violations of his fundamental human rights. To buttress his allegations, he referred the Commission to the proceedings and report of a Board of Inquiry headed by one Group Captain S. Disu which was set up by General Abdulsalami Salami

Reference 452 - 0.03% Coverage

Evidence during Public Hearing: During the public hearing of the petition on the 27th of June, 2001, senior counsel representing Alhaji Mohammed Abacha notified the Commission that his client has obtained an injunctive order from the Federal High Court, Abuja, restraining the Commission from hearing any aspect of the petition involving or affecting Mohammed Abacha pending the determination of the substantive suit. The senior counsel read out the relevant portions of the courts order and accordingly requested the Commission to suspend proceedings in relation to any complaints against Alhaji Mohammed Abacha. The Commission acceded to the senior counsel's request, emphasising that the Commission is bound to comply with a specific order of court. The Commission while sympathising with the petitioner, directed him to present his petition without reference to any human rights violations he suffered in the hands of Alhaji Mohammed Abacha.

Reference 453 - 0.01% Coverage

PETITION NO. 274: PETITIONER, DR BEKO RANSOME KUTI The petitioner, a medical practitioner and a well-known human rights activist, submitted a petition dated 24/7/99 alleging multiple violations of his fundamental human rights by successive Military regimes spanning over two decades. He also referred the Commission to the February, 1997 invasion of their family house by officers and men of the Nigerian Army under the regime of General Olusegun

Reference 454 - 0.02% Coverage

Under cross-examination by various counsel representing those responsible for the alleged violations of his rights, the petitioner stated that he did not like the military and would not be surprised if the military never liked him. He stated further that he was detained in Kuje prisons by the State Security Service under Decree No.2 of 1984 as amended and was tortured several times. The petitioner vehemently rejected the suggestion that his activities as the then Chairman of Campaign for Democracy (CD) (an umbrella human rights organisation) impacted negatively on law and order. He

Reference 455 - 0.04% Coverage

PETITION NO: 1298: PETITIONER: MR FEMI FALANA Mr. Femi Falana, human rights activist alleged that he suffered

numerous instances of abuse of his fundamental rights under the regimes of General Ibrahim Babangida, Chief Ernest Shonekan and late General Sani Abacha on account of his struggles for a just and democratic Nigeria. He further alleged that the authorities of the National Youth Service Corps Scheme NYSC had withheld his NYSC Discharge Certificate since 1983 after he had completed the service on schedule on the grounds that he embarrassed the government and the Corps by challenging the illegal detention of some undergraduate students of the University of Ibadan which was reported in the decided case of Andrew Ogo & 5 ors vs. Kolawole (1983) 1NCR at page 342. The petitioner urged the Commission to hold the regimes of General Muhammadu Buhari, General Ibrahim Babangida, Chief Ernest Shonekan and late General Sani Abacha accountable for these multiple violations of his rights. He alleged that these regimes implemented a programme of human rights violations as a deliberate policy of the state and accordingly requested the Commission to ensure that the perpetrators are brought to book. He further asked for the sum of one hundred million naira as compensation a public apology from the Federal Government.

Reference 456 - 0.02% Coverage

PETITION NO. 1403: PETITIONER: PROF: WOLE SOYINKA The petitioner, a renowned writer, playwright and Nobel Laureate, filed a petition dated 13/8/99 alleging multiple violations of his rights by the late Gen Sani Abacha's government and his agents through severe damage to his character and reputation, vandalism of his property and arbitrary attacks on his associates, friends and relations. While admitting that his case is not at par with other victims of gross human rights violations like the purge of Ogoni leadership and the gruesome murder of Kudirat Abiola etc., the petitioner referred the Commission

Reference 457 - 0.01% Coverage

to the provisions of Article 12 of the Universal Declaration of Human Rights which recognised an area of potential damage to the human persona.

Reference 458 - 0.01% Coverage

who suffered human rights violations on account of their association with him, particularly the members of the Pyrates Confraternity.

Reference 459 - 0.02% Coverage

2001 and 18 October 2001. The Commission sat for a total number of thirty four (34) days, and took one hundred and twelve (112) cases. Of this number, only seventeen (17) may be considered as fresh cases that were started and concluded at the third Abuja sitting. The rest were continuation of cases from other centres, including the first and second Abuja sittings. The third Abuja was the final lap of the Commission's sittings. A visit was paid to Zangon Kataf where meetings were held with the two conflicting parties in that community, as part of the reconciliatory efforts of the Commission. Special hearings also took place for the human rights community in Nigeria, and for the security agencies in the country.

Reference 460 - 0.04% Coverage

SPECIAL HEARINGS FROM THE HUMAN RIGHTS COMMUNITY These hearings took place on the 19th day of the third Abuja sitting, specifically on the 27th of September 2001. It involved presentations by civil

society groups and the National Human Rights Commission. The Chairman of the Commission commended the human rights community for the work they had been doing before the Commission came on board. He explained that the Commission stood to gain from their work. He stressed the centrality of civil society in the struggle for human rights.

a) The National Human Rights Commission was the first to make its presentation (marked Exhibit 1). It observed that human rights violations had become synonymous with military rule in Nigeria, and added that it would no longer go un-addressed. The Commission advocated for better forms of justice than retributive justice, pointing out the need to examine the causes of human rights violations. It opined that violations were perpetrated by government at all levels, and also by government agencies, and tribal militias. The National Human Rights Commission advocated the teaching of civic education and human rights norms in schools. Transparency was also advocated as a solution to corruption.

b) The Constitutional Rights Project followed (marked Exhibit 2). They opined that the great distortion of the Nigerian polity by the military and the use of decrees as opposed to constitutional processes were key causes of human rights violations. It decried the military justice system and called for non custodian methods of punishment for convicted offenders.

Reference 461 - 0.02% Coverage

c) The Prisons Rehabilitation and Welfare Action (PRAWA) made a presentation titled "Prisons and Penal Reforms Issues: Human Rights Violation and Recommendations". The paper drew attention to the hidden and voiceless nature of prisoners. It examined issues of death in custody, torture and overcrowding. It advocated that all prison deaths should be investigated. The paper stated that torture occurred during interrogation in order to elicit confessions. It added that evidence-based policing should be practiced, rather than confession-based policing. The paper attributed overcrowding to Awaiting Trial cases.

Reference 462 - 0.01% Coverage

d) The Centre for Free Speech made the next presentation, marked Exhibit 4. The paper did a comprehensive documentation of the draconian laws promulgated in Nigeria since 1968. It highlighted some of the major human rights violations on persons, especially journalists.

Reference 463 - 0.03% Coverage

The presentations were discussed generally. A contributor drew attention to the need to tie environmental rights to human rights, as people have a right to a safe environment. He advocated for Environmental Audit. He added that the Bakolori incident should be considered by the Commission as an act of human rights violation under a democratic regime, and recommendations for redress should be made. The Chairman of the Commission observed that such issues were outside the mandate of the Commission. However, following a suggestion from a contributor that most persons whose rights were violated would want compensations, there was a discussion about compensations and where the funds would come from. A discussant suggested that Nigeria's looted funds should be recovered and used for this purpose. Another was of the opinion that those individuals responsible for the violations should be compelled to pay for the compensations so that it can serve as a lesson to others in the future.

Reference 464 - 0.01% Coverage

The Chairman expressed his appreciation on behalf of the Commission, and assured them that the Commission would avail itself of the views and materials from the human rights community.

Reference 465 - 0.02% Coverage

a) The SSS made a presentation titled The Constitutional Role of the SSS (marked exhibit 1). It covered a definition of national security, fundamental human rights, and the relationship between national security and fundamental human rights. It deliberated on the functions of the SSS, its mode of operation, the legal functions of its operations, and the environment within which the SSS operates. The paper also delved into the threats which the SSS was facing, challenges facing the organization, the activities of the SSS under the Commission's terms of reference, repositioning the SSS, and a conclusion.

Reference 466 - 0.03% Coverage

c) The Nigeria Army presentation was made by Dr. Bello Fadile for the COAS. It was titled The Nigeria Army: A Call to Duty (marked Exhibit 3). The paper noted that in charting a new course for the Army, it was committed to the ideals of democracy. In addition to discussing the role of the Army, it delved into military incursion into politics, the rule of law in the Army, military justice system, human rights in the Nigeria Army and the petitions and allegations of human rights violations in the Nigeria Army. Other areas are the illegal arrests of civilians, torture, misuse of fast forces, trials by court marshal, trials before tribunals, illegal deployment of troops, etc. The paper also discussed civil-military relations and the lapses of the media, civilian collaborators in military rule, the distinction between military government and the Army, and the effects of military adventurism. The vision of the current COAS for the Nigeria Army were presented. It concluded by stating the faith of the Nigeria Army in justice and the judiciary.

Reference 467 - 0.02% Coverage

d) The Nigeria Prisons presentation was made by O. Ibrahim and O.W. Orakwe. It was titled The Overview of Human Rights Violations and Professional Hazards in the Nigerian Prisons (marked Exhibit 4). It defined the objectives of the Nigeria Prisons. It attributed human rights violations in the nation's prisons to two sources, the first being prison congestion due to delays in the justice system, and overbearing state policies (e.g. bringing people to the prisons without warrants); and ouster clauses that incapacitate the prison. Violations also result from punitive treatments and lack of rehabilitation, transfer and removal of prisoners from custody, violation of prison officers' rights by the state, professional hazards faced by the prisons staff, the effects of military rule on prisons and human rights violations and prison reforms. Recommendations were also made.

Reference 468 - 0.02% Coverage

seriously by the Commission as evidenced by the amount of time it devoted to the issue. After hearing Counsel to both petitioners and respondents argue the case for their respective clients, the Commission made a seminal pronouncement on the issue. Citing the instrument establishing it, the Commission argued that it had the power and the legal basis to summon anybody in Nigeria to appear before it and these officials were therefore no exceptions. On the reason(s) why these former government officials refused to appear before it, the Commission opined thus: The former Heads of State who refused to attend might have been motivated by motivated by the feeling of pride and arrogance, or through fear. Dictators govern an unwilling citizenry through fear. By the setting up of the Human Rights Violations

Reference 469 - 0.01% Coverage

Title of Petition Otunba Olabiyi Durojaiye Testimony on Human Rights Violation and Cruelty Inflicted on Me By Officers and Men of the Directorate of Military Intelligence (DMI), Apapa, Lagos from April 1996 to June 1998.

Reference 470 - 0.01% Coverage

Relief Sought by the Petitioner: 1) That the Commission should unearth the causes of human rights abuses in Nigeria
2) That the violators of human rights should be charged and if convicted should face appropriate punishment.

Reference 471 - 0.02% Coverage

detained for over 18 months in a solitary cell. b) That the petitioner was never charged to Court for any offence throughout the period of his detention. c) That following his non-release from detention, the petitioner was compelled to file a suit for the enforcement of his fundamental human rights before a Federal High Court in Lagos, whereupon the court ordered for his release and awarded the sum of N500,000.00 as damages to the petitioner and also N5,000.00 for every day he remained in detention. d) That these orders of the court were not complied with. The petitioner was however released in June, 1998 after the death of General Sani Abacha. e) That the petitioner was subjected to inhuman and degrading treatment throughout the period of his detention.

Reference 472 - 0.01% Coverage

Title of Petition Memorandum Submitted to the Chukwudifu Oputa Panel on Human Rights Violations

Reference 473 - 0.01% Coverage

Title of Petition Re: Mr. Chidi Elikwu of 8 Modile Way, Off Akerele Street, Surulere, Lagos - Victim of Human Rights Abuse by the Nigeria Police Force.

Reference 474 - 0.01% Coverage

Title of Petition Memorandum Submitted by Mrs. Oluabusola Arinola Adebusuyi To The Human Rights Violations Investigation Panel (HRVIP)

Reference 475 - 0.01% Coverage

Title of Petition The Search for Justice by the Late Asipa Family (1992 — 1999): Memorandum on Gross Violation of Human Rights Arising from Perversion of Justice, Mis-application of Judicial Power and Extreme Abuse of Office in the Desperate Bid to Cover up the Assassins of the Late Asipa of Oyo by the Military Regimes in Oyo State Under Col. Nwosu and Col. Hammed Usman (rtd)

Reference 476 - 0.01% Coverage

7. That the Commission should condemn in absolute terms the numerous instances of abuse of office and violation of human rights perpetrated by the Military Administrators and Ministry of Justice of Oyo State between 1995 and 1998 and recommend that the present Attorney-General

Reference 477 - 0.01% Coverage

Title of Petition Memorandum to the Hon. Justice Oputa Human Rights Violations Investigation Panel on the 1995 Phantom Coup Saga.

Reference 478 - 0.01% Coverage

b) The "Inter Centre" cell at the grave yards of Ikoyi Cemetery. c) The Interrogation Centre at No.67 Alexander Avenue, Ikoyi and transfer the premises and buildings to the use of the National Human Rights Commission.

Reference 479 - 0.01% Coverage

Title of Petition Memorandum on Human Rights Abuse

Reference 480 - 0.01% Coverage

Title of Petition Re:Memorandum of the Abuse of Human Rights: The case of Col. Roland Nosakhare Emokpae

Reference 481 - 0.01% Coverage

Title of Petition Petition of Rights Against Violation of Human Rights

Reference 482 - 0.01% Coverage

Title of Petition Memorandum Submitted to the Human Rights Violations Panel Instituted by the President, Federal Republic of Nigeria, Chief Olusegun Obasanjo on 14th June, 1999 to investigate Human Rights Abuses from January 1st 1995 to May 28th 1999.

Reference 483 - 0.02% Coverage

Forces Decree, he logged an application with the Armed Forces Disciplinary Appeal Committee (AFDAC) for leave to appeal to it. Five months later, the AFDAC wrote him refusing him leave to appeal. No reason was stated for this. An appeal lodged by the petitioner at the Lagos Division of the Court of Appeal was struck out in October 1997 on the ground that it was incompetent since the AFDAC was yet to hear the appeal in keeping with the provisions of the Armed Forces Decree. The petitioner was now caught in a legal tangle between the AFDAC and the Court of Appeal. Attempts by the petitioner to seek redress through the National Human Rights Commission and the Office of the Attorney-General of the Federation did not yield fruits. He also wrote to the Chief of Army Staff requesting for a review of his case after having served.

Reference 484 - 0.01% Coverage

Title of Petition Memorandum to the Human Rights Violations Investigation Panel the Road to my four years Sojourn at Bama Prisons, Borno state

Reference 485 - 0.01% Coverage

Relief Sought by the Petitioner The Petitioner is recommending that in order to prevent future generations of our people from experiencing such "inhumanity of man to man" again, all those found guilty (whether living or dead) of these crimes of total abuse of inherent human rights of our people should properly be made to pay for their sins, while the victims of their evil

Reference 486 - 0.01% Coverage

since the Police had refused investigation into the matter, inspite of a call from the Human Rights Commission. Abuja for same after a complaint was lodged with it by deceased family.

Reference 487 - 0.01% Coverage

revealed during the hearing that the National Human Rights commission had advised the Commissioner of Police of Cross River state to set the machinery in motion towards prosecuting the culprits. However, the petitioner in his oral testimony further revealed that it

Reference 488 - 0.01% Coverage

Recommendations In the circumstance, the Commission recommends as follows: a) That the recommendation of the National Human Rights Commission as contained in exhibit 2 be implemented

Reference 489 - 0.01% Coverage

Title of petition Petition to the Human Rights Violation Investigation Panel in respect of the brutal murder of Corporal Samuel Uzeroh 9late) Force No. 138665.

Reference 490 - 0.01% Coverage

Title of Petition Human Rights Violations at the University of Port Harcourt

Reference 491 - 0.01% Coverage

Title of Petition Re: Conspiracy, Human Rights Violation, Illegal Detention and Humiliation of my person by Engr. Solomon Nyagba M.D. BCC Plc and the Police.

Reference 492 - 0.01% Coverage

peace. While still in detention, his wife went to court to enforce his Fundamental Human Rights to personal liberty. As the case was heard, he was Markurdi for disturbance, Armed Robbery and kidnapping with intention to commit culpable homicide. He was granted bail but the Police still detained him under Decree 2 and hence he allegedly spent a year and 15 days at the Enugu Maximum prisons. On the arrival at the Police Headquarters, Markurdi he was detained for another 3 days.

Reference 493 - 0.01% Coverage

that Dr. Aguwa was detained at a guest for a period of Dr. E.S. Aneke, he denied ever ordering his arrest but that he gave order for his release the moment he became aware that the Doctor was being detained. He blamed there acts to violation on his aides who often act in excess of the instructions given to them. He apologised to the victims for any act of violations of then human rights that may have been perpetrated against them by his aids.

Reference 494 - 0.01% Coverage

sum of N250,000 each for the Violation of then human rights. The Naval Authority is advised to pay the money on behalf Captain Ominiya (rtd.0 and subsequently deduct same from his retirement benefits.

Reference 495 - 0.01% Coverage

Evidence of Alleged Perpetrators Only the petitioner testified at the hearing of his petition. The Commission was of the view that it had received sufficient evidence on the abuse of human rights using the instrumentality of the failed banks decree. The petitioner was however cross examined by Counsel representing the NDIC and the Nigerian Police. Counsel to the NDIC sought to disprove the claims of victimization made by the petitioner.

Reference 496 - 0.01% Coverage

v) A representative of the Human Rights Groups in Nigeria.

Reference 497 - 0.01% Coverage

e) That the petitioner's rights were similarly violated by the regime of General Ibrahim Babangida based on his human rights activism.

Reference 498 - 0.01% Coverage

2) That the investigation team shall comprise: i) an Assistant Inspector-General of Police as the head and five other senior police officers ii) A representative of the Nigerian Army iii) A representative of the Nigerian Medical Association iv) A representative of the Human Rights Organisation

Reference 499 - 0.01% Coverage

Title of Petition Petition For Right And Remedy For Human Rights Abuses

Reference 500 - 0.01% Coverage

Title of Petition A brief History of persecution and violation of human rights against me Facts and Background submission to the Human Rights Violations Investigation Panel

Reference 501 - 0.01% Coverage

Title of Petition Memorandum on Human Rights Abuses from 27th February, 1995 to 4th March, 1999

Reference 502 - 0.01% Coverage

prisoners had to endure during his incarceration. He and the other coup convicts were subjected to severe torture as well as a situation of near starvation, the latter being the lot of the average prisoner in Nigeria. The Petitioner urges the Commission to redress the abuse of his human rights.

Reference 503 - 0.02% Coverage

Findings and Observations After reviewing the evidence of the petitioner and the alleged perpetrators, the Commission finds as follows: ✓The petitioner was one of the numerous human rights activists who suffered various abuses of their rights during successive Military Regimes in Nigeria.

✓The petitioner was a victim of several arrests and detention by officers of the State Security Service, the Nigeria Police and the Directorate of Military Intelligence as well as the Interim National Government of Chief Ernest Shonekan for his human rights activities.

Reference 504 - 0.01% Coverage

■ Payment of the sum of N100,000.00 (One Hundred Thousand Naira) for the numerous abuses of his human rights by successive Governments in Nigeria.

Reference 505 - 0.02% Coverage

Mode of treatment of Petition The petition was slated for hearing during the First Abuja sitting of the Commission. However, owing to the absence of the petitioner, it was Moved to the second Abuja session during which the petitioner sent a Letter to the Commission seeking to withdraw his petition on the Ground that he had forgiven all those who violated his human rights. This move was vehemently opposed by counsel to some of the alleged perpetrators who were present namely: Brig. General Ibrahim Sabo, Major Hamza Al-Mustapha, and Major Argungu who insisted that their Clients must be allowed to present their own sides of the story. The

Reference 506 - 0.01% Coverage

✓The Commission further notes that the petitioner had in his letter requesting withdrawal of his petition stated that he had forgiven all those who violated his human rights and only

Reference 507 - 0.01% Coverage

Title of Petition Memorandum for the Human Rights Violation Investigation Panel on my Torture, Detention without trial, and retirement from the Nigerian Army on my alleged involvement in 1995 phantom coup.

Reference 508 - 0.01% Coverage

Title of Petition Memorandum by Musa Adede to the Special Human Rights Violations Investigation Panel on his illegal arrest and detention.

Reference 509 - 0.01% Coverage

Odua Peoples Congress Memorandum to the Justice Oputa Human Rights Violation Investigation Panel on the Bombing of Dr. Shola Omoshola, former Chief Security Officer, and Assistant General Manager Security Federal Airport Authority of Nigeria at the Murtala Muhammed Airport, Lagos.

Reference 510 - 0.01% Coverage

Names and Addresses of Witnesses The Petitioner, c/o his address as in Column 1 above. Remarks The Petitioner suffered grievous violations of his human rights. There is nothing to justify the use of state power to inflict torture and inhuman treatment on any citizen, no matter the seriousness of the

Reference 511 - 0.01% Coverage

Title of Petition MEMORANDUM SUMMITTED BY OLUSEGUN ADEGBENGA ADEBUSIYI TO THE JUSTICE OPUTA PANEL ON INVESTIGATION OF HUMAN RIGHTS VIOLATIONS IN NIGERIA

Reference 512 - 0.01% Coverage

Title of Petition MEMORANDUM TO JUSTICE CHUKWUDIFU OPUTA PANEL ON HUMAN RIGHTS ABUSES IN THE FEDERAL REPUBLIC OF NIGERIA

Reference 513 - 0.01% Coverage

Memorandum To Justice Oputa Panel On Human Rights Abuses In The Federal Republic of Nigeria.

Reference 514 - 0.01% Coverage

Petition On Human Rights Violation. Re: Rear Admiral Emmanuel Olu Omotehinwa (deceased).

Reference 515 - 0.01% Coverage

b) The "Inter Centre" cell at the grave yards of Ikoyi Cemetery. c) The Interrogation Centre at No 67 Alexander Avenue, Ikoyi and transfer the premises and buildings to the use of the National Human Rights Commission.

Reference 516 - 0.01% Coverage

1 See Section 46{1} The Fundamental Human Rights Enforcement Procedure Rules states the procedure for initiating legal proceedings on human rights issues. See Bello V Attorney-General of Oyo State {1986}5NWLR 828 citing with approval the dictum of Holt C.J. in Ashby V White {1703}2Ld.Raym.938 If the plaintiff has a right ,he must have the means to vindicate it, and a remedy, if he is injured in the enjoyment or exercise of it: and it is a vain thing to imagine a right without a remedy: for want of right and want of remedy are reciprocal..

Reference 517 - 0.01% Coverage

10 Article 6 11 Article 2 {3} {a} Article 9 {5} See relevant jurisprudence of the Human Rights Committee established under

Rwanda – Unity and Reconciliation Process> - § 40 references coded [4.29% Coverage]

Reference 1 - 0.07% Coverage

Rwanda is a country that has a long history manifested in varying eras—the pre-colonial, colonial and post-colonial. During the pre-colonial era, Rwanda was a united society. Rwandans' unity became hampered since the arrival of colonial administration and missionaries, through their divide and rule policy. Divisive policies and ideology of hate, as well as the persecution and violation of human rights characterized this form of bad leadership. This situation perpetuated and climaxed into one of the most brutal and devastating Genocides in the history of humanity—the 1994 Genocide perpetrated against Tutsi, which was halted by the victorious liberation war of the Rwandese Patriotic Army (RPA)—the then armed wing of Rwandese Patriotic Front (RPF).

Reference 2 - 0.35% Coverage

4.2.2. Repatriation, Resettlement and Reintegration of Refugees and IDPs	41	4.2.3. Military integration and security	45
4.2.4. Demobilization and Reintegration of ex-combatants	47	4.2.5. Local consultations	49
4.2.6. National consultations—Urugwiro Village meetings	50	4.3. National Unity and Reconciliation Commission	52
4.3.1. Grassroots—community consultations	54	4.3.2. National Summits	56
4.3.3. Seminars.....	57	4.3.4. Research	58
4.3.5. Major achievements of the NURC toward unity and reconciliation	59	4.4. Good governance and the Rule of Law	65
4.4.1. Democratic governance and pluralism	66	4.4.2. Effective decentralization	68
4.4.3. Constitutional reform	70	4.4.4. National Policy on Unity and Reconciliation	74
4.4.5. Human rights	77	4.4.6. Gender equality	80
4.4.7. Equal access to public service	81	4.4.8. Fighting against Genocide and its ideology	81
4.4.9. Combating corruption	82	4.4.10. Equity, Transparency and Accountability	83
4.4.11. Imihigo—Performance contracts	85	4.4.12. Umushyikirano—National Dialogue Council	88
4.4.13. Umwihereho—Leadership retreat	88	4.5. Socio-economic welfare	90
4.5.1. Vision 2020	91	4.5.2. Economic Development and Poverty Reduction Strategy	93
4.5.3. Social protection programs	93	4.5.3.1. Vision 2020 Umurenge Program	94
4.5.3.2. Girinka—One cow per poor family program	94	4.5.3.3. Haute Intensité de la Main d'œuvre (HIMO)	96
4.5.4. Ubudehe—Community work	96	4.5.5. Umuganda—Collective action	97

Reference 3 - 0.01% Coverage

Reference 4 - 0.24% Coverage

institutions had planned and carried out the Genocide against Tutsi.⁶ The entire infrastructure of the country, ranging from schools, hospitals, factories and government departments, had been totally destroyed or severely looted by the fleeing genocidal forces and Interahamwe (militias). Law and order had completely broken down; all national law enforcement agencies and judicial institutions had ceased to exist; and the system of administration of justice had come to a standstill. There was no civil service and the government administrative capacity had collapsed. Civil servants had either been killed during the Genocide or had fled the country. The country was thus left with the traumatized survivors, countless orphans and widows, thousands of handicapped people, and generally a very traumatized and vulnerable population. A cloud of insecurity was also still persisting because the defeated ex-Forces Armées Rwandaises (FAR) and Interahamwe (militias) were reorganizing themselves so as to continue their genocidal campaign and actions.⁷ After the 1994 Genocide against Tutsi, the new Government—the Government of National Unity, constituted on July 19th, 1994 by a coalition of political parties headed by the Rwandese Patriotic Front (RPF), was therefore faced with a huge challenge to unite and reconcile Rwandans, who were in total trauma and distress.⁸ Restoring trust in the authorities and, in particular, rehabilitating the image of the police and the army, which had taken part in the genocide under the previous regime, would be no mean feat. There would have to be a period of transition before a new Rwanda could be built on the ashes of the old. The overall challenge was thus how to rebuild the socio-economic, cultural and institutional fabric, restore security, provide justice, and bring about reconciliation and unity in a devastated country made up of the wounded and traumatized people.⁹ Amidst this huge challenge, the post 1994 Government of National Unity (GNU) was also fully determined to restore Rwanda's plight in the international family. The GNU's strong political will was indeed reflected in its development agenda, which was built on four pillars namely: Good governance, Justice, Security, Economic Development and Social Welfare.¹⁰ Central to the whole development agenda was the issue of unity and reconciliation, security and stability of Rwanda and its people, human rights, promotion of transparency and accountability within government institutions, repatriating, settling and reintegrating the millions of refugees, who were living in neighboring countries (notably the Democratic

Reference 5 - 0.12% Coverage

It is worth to note that the Tutsi who remained in the country were excluded from political and civil rights. Particularly, they were denied the right to education, right to employment, right to civil participation, as well as other human rights,⁸⁵ which was radicalized by the state. For example, President Kayibanda said that 'Two nations in a single state, two nations between whom there is no intercourse and no sympathy, who are as ignorant of each other's habits, thoughts and feelings as if they were dwellers of different zones, or inhabitants of different planets.'⁸⁶ In the eyes of President Kayibanda himself, the issue of co-existence and pacific cohabitation between Hutu and Tutsi required the establishment of two separate zones; otherwise 'one ethnic group should disappear on behalf of the other.' Kayibanda went further by submitting to the UN and the former Belgian metropolis a proposal of zone redistribution, the Hutu-land and the Tutsi-land. The Tutsi-land would be the more habitable part of Bugesera, Buganza and all the territory, which had become the provinces of Kibungo and Umutara (the Eastern-part of Rwanda); and the remaining part of the country would be the 'Hutu Zone'. Unity, concord, mutual assistance, trust, collaboration, patriotism among Rwandans had thus lost their value and no longer existed.

Reference 6 - 0.08% Coverage

As indeed discussed in the next subsection, the discriminatory policies and MRND's lack of respect of democracy, basic human rights and rule of law, led to the formation of Rwanda Alliance for National Unity (RANU) later transformed into Rwandese Patriotic Front (RPF), in 1987, with the intent to fight for human rights and democratic change in Rwanda. After the failure of all peaceful means to reform the MRND regime, RPF eventually resorted to the liberation war in 1990. The MRND regime responded by organizing and committing acts of Genocide against Tutsi and opposition in 1990, 1991, 1992, which climaxed in the 1994 Genocide against Tutsi,⁹² which was repeatedly referred to, by the Genocide planners, as an apocalypse. Hatred against Tutsi was preached in the broad-day. For example, the speech of former President Juvénal Habyarimana, in MRND Congress held on 28 April 1991, underlined:

Reference 7 - 0.09% Coverage

Ngeze Hassan wrote: —Habyarimana azapfa muri Werurwe 1994||, literally translated: —Habyarimana will die in March 1994.|| In addition, RTLM aired that —hari akantu kazakorwa muri Kigali ku ya 3,4, n'ya 5 kandi ku ya 6 n'ya 7 hazumvikana amasasu menshi muri Kigali||, literally translated as: —there is something that will happen in Kigali on 3rd, 4th 5th and on 6th and 7th there will be much bullets sound in Kigali||. All these data indicate that President Habyarimana was assassinated by his political inner circle. Consequently, after the President's plane crash on 6 April 1994, the following minutes, massacre of Tutsi openly started in the capital, Kigali, and later in other parts of the country, in the presence and failure of United Nations peace keeping forces (UNAMIR). In 1993, Human Rights Watch released a report on mass killings of Tutsi in Rwanda. In the same year, Ndiaye B., who was the UN Special Rapporteur on Summary, Arbitrary and Extrajudicial Executions, conducted a mission to Rwanda and reported massacres against

Reference 8 - 0.11% Coverage

The third model of reconciliation can be described as political reconciliation, often referred to as 'National Reconciliation' (NR), and also called thin reconciliation, associated with a national or political paradigm—with socio-political institutions and processes, as units of analysis. Some also talk of National Unity and Reconciliation.¹⁴⁸ This approach to reconciliation, unlike the second (thick reconciliation), assumes that former enemies are unlikely to agree with each other or even to get along very well. In this regard, one important aspect of NR is 'the development of a political culture that is respectful of the human rights of all people'. As Borer stresses, NR's emphasis is that —the state should strive to build legitimate and representative state institutions which respect fundamental human rights|| and in which it is the state's responsibility to —create a culture of rights based upon an inclusive and democratic notion of citizenship.|| In sum, the NR model of reconciliation is most closely associated with the following terms: tolerance, rule of law (justice), democracy, human rights culture, conflict resolution, transparency, and public debate.

Reference 9 - 0.01% Coverage

- To combat the Genocide and its ideology, and strive at creating a nation governed by the rule of law and respect for human rights;

Reference 10 - 0.16% Coverage

National Unity has been a corner stone on which the post-1994 Genocide government was built. As emphasized previously, the aftermath of the 1994 Genocide against Tutsi, and the liberation war that

brought it to halt, was faced with a huge challenge of how to unite and reconcile Rwandans, who were in total trauma and distress. In this regard, the first mechanism put in place by the victorious RPF/RPA, since the end of the Genocide, was to put in place a Government of National Unity that was inclusive of political parties, which had not taken part in the Genocide against Tutsi.¹⁶⁴ The political principle of the post-1994 new government (Government of National Unity) indeed considered unity and reconciliation of Rwandans as the cornerstone in reconstructing the nation.¹⁶⁵ This Government was fully determined to restore Rwanda's plight in the international family. Its development agenda was built on four pillars namely: Good governance, Justice, Security, Economic Development and Social Welfare.¹⁶⁶ Central to the whole development agenda was the issue of unity and reconciliation, human rights, transparency and accountability within government institutions, creating a strong foundation for sound economic recovery, as well as empowering the local masses/citizens to participate in their governance. The new Government (Government of National Unity) thus immediately engaged in wide grassroots and national consultations (discussed later) so as to discuss about the future of Rwanda, which demonstrates its partnership with local, regional, and international actors—both private and public, including the civil society—in addressing the legacy of the divisive past in a way that reunites and reconciles Rwandans.

Reference 11 - 0.10% Coverage

The Government of National Unity was truly representative of the Rwandan people. It inspired confidence to the people of Rwanda, and became the corner stone of the rebuilding process.¹⁶⁷ The statement below provides a summary of how post-1994 Government of National unity quickly behaved toward unity and reconciliation in Rwanda: The Government of National Unity, made up of a coalition of political parties, repatriated and resettled over three million refugees; we [Government of National Unity] integrated into our armed forces over twenty thousand officers and men of the former army. We have restored public trust in the legal system and we were thus able to avoid revenge for the Genocide...We have instituted reforms to guarantee independency of the judiciary. The long established culture of impunity, which encouraged past human rights abuses...has at least been broken. Security for persons and property is now at all times guaranteed for everyone and everywhere throughout the country. We have put in place institutions, which will make transparency and accountability the corner stone of our agenda...¹⁶⁸

Reference 12 - 0.03% Coverage

193 Mgbako, C. (2005). —Ingando Solidarity Camps: Reconciliation and Political Indoctrination in PostGenocide Rwanda. In Harvard Human Rights Journal / Vol. 18 pp.201-224; Ruhunga (2006), In Licklide Roy (2014). New Armies from Old: Merging Competing Military Forces After Civil Wars: Georgetown university press, p.87-90.

Reference 13 - 0.07% Coverage

In line with its mandate, the NURC organized and hosted the National Summits on unity and reconciliation, since 2000.²³³ The National Summit is indeed provided for by the Law establishing the NURC, which requires her to organize National Summits.²³⁴ The Summit brings together Rwandans from all walks of life, including Rwandans from the Diaspora, as well as important persons from the international community. It is a forum that discusses about unity and reconciliation issues and that informs the public about the progress and challenges in unity and reconciliation, toward a way forward. Topics discussed during the National Summits generally include, but not limited to, national history, unity and reconciliation, governance, justice, human rights, security, and development.²³⁵

Reference 14 - 0.04% Coverage

5. The NURC also supported/supports annual community festivals that play an important role in unity and reconciliation process. It also supports cultural activities, such as theatre, music, dance and art as tools of social transformation, reconciliation and unity amongst Rwandans. These tools help to pass along the message of unity and reconciliation, peace and tolerance, as well as human rights and social justice that NURC indeed promotes.

Reference 15 - 0.08% Coverage

Through its constitutional history, Rwanda never had a constitution with values and principles responding to its expectations as a united society. All its former constitutions were often copied from foreign countries without considering the country's realities or were just there to fit the interests of the leaders of the time. In either case, the population was not involved in the elaboration process of such fundamental laws.²⁸⁷ The new Constitution of the Republic of Rwanda (promulgated on June 4th, 2003) as amended to date, makes the difference on all these weak points. Under 'unity, work, and patriotism', as its motto (Article 6), the elaboration of the new Constitution was participatory (all Rwandan citizens participated in its elaboration) and over 93% of voters had approved it on May 26th, 2003, in adherence to the universal principles of human rights. In this regard, illustrative contentions from citizens are clear:

Reference 16 - 0.05% Coverage

Another important innovation, brought about by the new constitution, has to do with the creation of specific institutions, which are responsible for helping in resolving major issues facing the country, whereby unity and reconciliation is at the core. These institutions include the National Unity and Reconciliation Commission (Art. 178), the National Commission for Human Rights (Art.177), the National Commission for the Fight against Genocide (Art.179), the National Electoral Commission (Art.180), the Public Service Commission (Art.181), the

Reference 17 - 0.15% Coverage

Office of the Ombudsman (Art.182), the Office of the Auditor-General of State Finances (Art.183), and the Gender Monitoring Office (Art. 185).³⁰³ The promotion of unity and reconciliation in Rwanda was, and remains, therefore embedded within this unifying constitutional reform and the related legal provisions, including those ensuring human rights, a corrupted free society, accountability and transparency, in a way that ensures and respects the rule of law. It is within this framework that a national policy on unity and reconciliation was also elaborated. 4.4.4. National Policy on Unity and Reconciliation In August 2007, a National Policy on Unity and Reconciliation for Rwandans was officially publicized. The policy is mainly based on principles of Good Governance, that Rwanda has undertaken to follow, and the Constitution of the 2003 Republic of Rwanda, as amended to date, particularly in its chapter on the Fundamental Principles: Articles 9 and 178. This policy is also based on ideas taken from the country's Vision 2020 (to be discussed later), and those taken from the Law number 03/99 of March 12th 1999, which establishes the National Unity and Reconciliation Commission, and Law number 35/2002 of November 14th 2002, as amended to date. The content of the National Policy on Unity and Reconciliation also relates closely to the Arusha Peace Accords of 1993 (Art.88) between the Rwandese Patriotic Front and the then Government of Rwanda, the Urugwiro Consultations (1998-1999) and various grassroots and community

consultations and researches that the National Unity and Reconciliation Commission undertook between 1999 and 2006.³⁰⁴

Reference 18 - 0.01% Coverage

2) To combat Genocide and its ideology; 3) To strive at creating a nation governed by the rule of law and respect for human rights;

Reference 19 - 0.17% Coverage

The national policy on unity and reconciliation emphasizes that in its implementation, regarding notably the above-described principles, strategic legal measures that ensure the human rights must also be taken into consideration.³¹⁰ 4.4.5. Human rights Rwandans' rights must be respected; all Rwandans should be equal before the law; no Rwandan citizen should be denied access to anything s/he has right and ability to.³¹¹

Successful unity and reconciliation requires that human rights are respected. Ensuring human rights in Rwanda was in fact the preoccupation of the post-Genocide new leadership. This is also in accordance with the Protocol of Agreement between the then Government of the Republic of Rwanda and the Rwandese Patriotic Front on the Rule of Law, which emphasized the respect and protection of human rights while recognizing the universal nature of human rights while expressing concern when these rights are violated anywhere and by anybody (Article 14). The two parties had also agreed that a National Commission on Human Rights had to be established to investigate human rights violations (Article 15).³¹²

It is by way of compliance with the 1993 Arusha Peace Agreements that the Rwandan Human Rights Commission (RHRC) was thus established by the Law No 04-99 of 12/03/1999 with a mandate to ensure that all citizens of Rwanda enjoy their fundamental human rights. The mandate of this commission indeed reflects the respective principles of 'social justice', the 'rule of law' and 'equality' of the 2003 Constitution of the Republic of Rwanda, as amended to date, a constitution that indeed reiterates the establishment of the National Commission for Human Rights (Art.177).

The vision of the Rwandan Human Rights Commission is a Rwandan society in which every individual lives in peace, harmony and prosperity and enjoys fully his rights. The Commission

Reference 20 - 0.23% Coverage

is therefore committed to promote and protect the Human Rights, to install a culture of respect for the Human Rights and to reinforce the Rule of Law in Rwanda. The RHRC is tasked with the sensitization of Rwandans about their rights to justice. It receives complaints from the population and investigates breaches of law, then takes necessary action. It also monitors issues related to good governance.³¹³ In this regard, Rwandan Human Rights Commission ensures that all citizens of Rwanda enjoy their fundamental human rights as described in the constitution. The Commission does so by creating widespread awareness of human rights issues in Rwanda largely through seminars and consultations at different levels and offices at provincial and district levels.³¹⁴ The principle of equal rights has been an ingredient in the promotion of unity and reconciliation. Striving for equal access to service delivered, combating suspicion, hatred and nepotism, and fighting against discrimination (including gender based discrimination, as discussed below), etc., have been part of this process.³¹⁵ Gender equality was also part of human rights assurance. 4.4.6. Gender equality We believe that, improving gender relations in our country marks healthy progress towards realizing our vision of 'a united, democratic and prosperous Rwanda'.³¹⁶

The promotion of gender equality, and women's empowerment, was considered by the Government of National Unity as a prerequisite for sustainable peace and development. In this regard, one of the principles of the 2003 National Constitution, as amended to date, is to ensure equal rights between men (male) and women (female), an issue of development, governance, human rights and social justice and cohesion in Rwanda.³¹⁷ It is in this perspective that a Gender Monitoring Office (GMO)—a public institution established by the 2003 Constitution of the Republic of Rwanda, as amended to date (Article 185)—was created. The Law no 51/2007 of 20/09/2007 determines the responsibilities, organization and functioning of the GMO, with the mission of promoting gender equality and women empowerment in Rwanda. Gender Monitoring Office is thus part of the gender promoting mechanisms that particularly facilitate gender equality, and a distinctive value to women and girls. This refers back to the traditional Rwandan society that was characterized and shaped by cultural homogeneity. Though the patriarchy was characteristic, women and girls, whose informal role was much valued, played important role in building peace and social harmony. In Rwanda, traditionally,

Reference 21 - 0.03% Coverage

Not only gender equality was respected in post-Genocide Rwanda, but also, and as part of human rights respect, the post 1994 new government was convinced that equal access for all Rwandan citizens to public service is also key to reconciliation and the restoration of unity in Rwanda.

Reference 22 - 0.10% Coverage

As it is the case for human rights, the principle of equal access to public service is also an important ingredient in successful unity and reconciliation process. To materialize this, the Constitution of the Republic of Rwanda of 4 June 2003, as amended to date, stipulates the establishment of the Public Service Commission (Art.181). In this regard, the Constitution of the Republic of Rwanda (Article 45) stipulates that: —All citizens have the right of equal access to public service in accordance with their competence and abilities||.³²¹ The Public Service Commission has been put in place to serve that purpose and to regulate the recruitment process in public institutions. Its mandate covers all civilian public servants who are employed within the institutions of the executive branch of government. These include: • Ministries and attached bodies; • Government educational and medical establishments and overseas missions; • Local government provinces, districts, sectors and cells; • Public agencies, boards and other institutions, which report directly or indirectly to the Cabinet.

Reference 23 - 0.01% Coverage

Besides ensuring human rights and equality, fighting against divisions and Genocide

Reference 24 - 0.12% Coverage

The Vision 2020 aspires for Rwanda _to become a modern, strong and united nation, proud of its fundamental values, politically stable and without discrimination amongst its citizens.' To achieve this, Vision 2020 set out the aim for Rwanda _to become a middle income country by the year 2020.' Through its Vision 2020, Rwanda —is committed to being a capable state, characterized by the rule of law that supports and protects all its citizens without discrimination...and the protection of human rights in particular.||³⁵¹ As pointed out above, studies indicated that reconciliation in post-conflict era couldn't be possible without economic, social and political development.³⁵² This explains why Rwanda's Vision 2020 is critical to mainstreaming unity and reconciliation in all development plans of the country.³⁵³ The Vision

2020 is built on six pillars and three cross-cutting ones: good governance and a capable state, human resource development and a knowledge based economy, a private sector-led economy, infrastructure development, productive and market oriented agriculture, regional and International economic integration. The cross-cutting pillars include: gender equality, protection of environment and sustainable natural resource management, the rebuilding of the citizen's social capital, and science and technology, including ICT.³⁵⁴

Reference 25 - 0.18% Coverage

With the first EDPRS, the average real GDP growth was 8.2% and poverty was reduced from 56.7% to 44.9% between 2006 and 2011.³⁶⁵ In this regard, the first EDPRS contributed to unity and reconciliation by promoting good governance and decentralization, with the purpose of enhancing trust, rule of law, the promotion of human rights and social cohesion. The document stressed the linkage between governance, peace, security, unity and reconciliation as a basis for stable political environment.³⁶⁶ Likewise, the second EDPRS focuses on enhancing dialogue at grassroots level with the ultimate objective of restoring social relationships as well as rebuilding trust that was torn by the divisive past and especially the 1994 Genocide against Tutsi.³⁶⁷ The EDPRS 2 emphasizes the engagement to enhance dialogue at grassroots level with the ultimate objective of restoring social relationships as well as rebuilding trust that was torn by the divisive past and, particularly, the 1994 Genocide against Tutsi. The document also recognizes that unity and reconciliation cannot be possible with counterfactual information on Rwandan history and Genocide. In this regard, efforts are directed to encouraging national and international writers to —record and publish factual accounts|| on the dark past of Rwanda and Genocide against Tutsi, and reconciliation endeavors.³⁶⁸ To achieve the above, the document emphasizes that national summits and forums on unity and reconciliation, aimed at promoting the ‘_Rwandan identity’, should be kept organized. The document also stresses that the eradication of impunity is part of the reconciliation process whereby Rwanda has to increase the efforts of bringing the criminals to justice through regional and international cooperation. The outstanding effort will be to —establish and publicize a data base of suspects with outstanding warrants||. In this, the role of Diaspora is paramount in publicizing the fight against impunity.³⁶⁹

Reference 26 - 0.07% Coverage

to create policies which are in keeping with the new reality...to correct the errors of the past...they also aim to build an appropriate educational system, which satisfies the wishes and needs of the population to train people free of ethnic, regional, national and religious prejudices, conscious of human rights and responsibilities conscious also of their membership to the international community. ⁴⁷⁸

The mission of post-1994 education system was therefore: ⁴⁷⁹ • To prepare a citizen who is free from ethnic, regional, religion, and sex discrimination; • To prepare a citizen who is aware of human rights and responsible to society; • To promote a culture of peace and emphasize national and universal values such as justice, peace, tolerance, solidarity and democracy;

Reference 27 - 0.17% Coverage

In Rwanda, memory focuses on the recognition of past injustice and violations of human rights—that climaxed into the 1994 Genocide against Tutsi—as well as their impact, towards preventive measures under —never again|| commitment of the Government of National Unity after 1994.⁴⁹³ Therefore, unlike the modern era whereby memory is solely labeled as archival, because of its primary purpose has become a means of preserving history,⁴⁹⁴ memory in the context of Rwanda goes beyond preserving history and

adds the preventive and the correctional measures, as well as the envisioning of the constructive future of the society. In this regard, the Rwandan government has not chosen against amnesia of events that have occurred. Memorials at massacre sites and annual commemorations are used to preserve the memory of the Genocide against Tutsi—a climax of the divisive past—and to show the dangerous results of ethnic divisions.⁴⁹⁵ Monuments, Memorials, and Museums have thus been part of unity and reconciliation process. The same goes to cultural products of various kinds, films, novels, and national holidays. Related activities highlight the maintenance of memorial sites, the promotion of national rituals of commemoration, new national symbols to shape the collective memory of Rwandan history, and the annual-national Day of Heroes, as put previously, highlighting individuals, who have fought ethnic division.⁴⁹⁶ The museum also conducts workshops for secondary students: Learning from the past; Building the future workshops.⁴⁹⁷ In particular, the every year national commemoration that remembers, or commemorates for, the victims of the 1994 Genocide perpetrated against Tutsi refreshes and fosters collective memory.⁴⁹⁸ Another crucial application of memory to analyzing post-conflict societies is the intrinsic link between memory and identity. In Rwanda, identity is linked through sameness,⁴⁹⁹ which is

Reference 28 - 0.23% Coverage

brought about by the previously described program of Ndi Umunyarwanda aimed at building a collective memory that transcends ethnic borders. The rebuilding of Rwanda also focuses on the linkage between truth and memory. Although truth narrative does not play the same role as historical truth,⁵⁰⁰ some experts go so far as to suggest that the —truth|| created through memory is more —truthful|| than history, since it is the —truth of personal experience and individual memory.||⁵⁰¹ Preserving memory has thus been a tool for Rwandans to constantly reflect on what divided them, the consequences of divisions in order to unite, reconcile and work together for a ‘never again’ to divisions, violence and genocide. 4.7. Reconciliatory Justice It is generally contended that justice is part of unity and reconciliation—indeed one of its ingredients. As Sarkin posits, —justice is a critical aspect of ensuring the respect of human rights and the rule of law.||⁵⁰² Generally put, justice is a vital requirement for healing wounds, making offenders accountable. Many people even argue that the search for peaceful coexistence, trust, empathy and democratic power sharing demands that ‘justice be done’ so that, in one-way or another, the crimes of the past be acknowledged and punished.⁵⁰³ This is in fact the dominant discourse referred to as retributive or deterrent justice, which stresses that punishment is necessary so as to discourage a convicted perpetrator from committing another crime. For the case of Rwanda, and within the overall purpose of achieving unity and reconciliation, justice provided goes beyond the dominant discourse of retributive or deterrent justice. Instead, the focus is on restorative justice—form of transitional justice. Rwanda chose restorative, not only because of the necessity for reconciliation and the restoration of unity, but also because it was the only alternative. The 1994 Genocide against the Tutsi, consequent to the divisive past and the culture of impunity, had devastated the entire fabric of Rwanda, with the breakdown of institutions, including the judiciary system. Immediately after the 1994 Genocide, the new government’s priority was to restore shattered national unity and find a way of purging Rwanda of the fostering hatred that lingered on in the hills and villages. In order to do that, however, there had to be an end to impunity. Rwanda could not be rebuilt until the victims of past human rights violations (involving persecutions, the war, and the 1994 Genocide against Tutsi,

Reference 29 - 0.01% Coverage

4. Enhanced rule of law, accountability and competitiveness; and 5. Maintained safety, law and order, and enhanced adherence to human rights.

Reference 30 - 0.12% Coverage

Within the perspective of restorative justice, community service, often referred to, in French language as, Travaux d'Intérêt Général (TIG), were initiated in 2005. It was an alternative penalty to imprisonment—an innovative punishment program, which allows people convicted of participating in the Genocide to serve part of their sentences doing community services, as a new form of justice in Rwanda that focuses on ideas of unity and reconciliation.⁵⁶¹ Such alternative measures are critical in the case of other vulnerable groups such as expectant and breastfeeding mothers, chronically ill and people living with disabilities. The Organic Law No 01/2012/OL of 20/15/2012 instituting the Penal Code provides for three alternative penalties: payment of a fine, community service as alternative to imprisonment and suspension of a sentence. These mechanisms enabled/enable self-reflection among convicts and opened opportunities for expressions of repentance, apology, and request for forgiveness. 4.7.4. Correctional Services Justice strategies, which promotes access to justice, correction, prevention of human rights violations, empowering inmates through provision of legal aid services and professionalization of life skills, and promoting use of alternative sentences, such as Community Service, are relevant in Unity and Reconciliation.

Reference 31 - 0.06% Coverage

This service increased the level of access to justice for all Rwandans, without discrimination, particularly by expanding the legal aid provision, streamlining and improving the alternative dispute resolution system through effective coordination, establishing the legal aid fund, and by setting up a stakeholder legal aid committee and Access to Justice Unit to coordinate the day-to-day management of legal aid provision. It also defined the main eligibility criteria for legal aid. The successful implementation of this policy contributed to strengthening the rule of law, protection and promotion of human rights and increasing access to justice for all Rwandans.⁵⁶⁴

Reference 32 - 0.10% Coverage

This space enabled Rwandans to get together to talk about the history of their country so that lessons can be learnt from those talks for people to correct their false perception of their national history, and there emerged the possibility of building a new Rwanda that is respectful of human rights. Public talks and debates have proved to be tremendously helpful in that they provide Rwandans with the opportunity to share their vision and perspective in solving the variety of problems facing the country. Rwandans also got a chance, through this space, to identify their genuine interests, just as they got to know the role they have to play in building their country.⁵⁹⁵ For example, the National Dialogue Council (Umushyikirano) has served as a forum where Rwandans have had the opportunity to directly interact with leaders, including the President of the Republic, on a wide range of issues regarding the country's development agenda. The forum has served as a catalyst for implementation of government programs as it helps to enhance planning, governance, as well as effective delivery of government priorities.⁵⁹⁶

Reference 33 - 0.05% Coverage

To this end, most of the attention and much of the resources had however gone to the universal or 'western' forms of justice,⁶⁰¹ in the example of the UN-International Crimes Tribunal for Rwanda (ICTR), based in Tanzania, which had a jurisdiction over the indictment of only the suspected planners of the Genocide against Tutsi. No attention, at all, was however paid to the yet other thousands of suspected

généralistes and other actors of human rights abuse, beside planners.⁶⁰² Most importantly, issues with the ICTR have

Reference 34 - 0.28% Coverage

Unity and Reconciliation suggest that a space for the acknowledgement of the past and envisioning of the future is the necessary ingredient for reframing the present. Acknowledgment is decisive in Unity and Reconciliation dynamic. It is one thing to know; it is yet a very different social phenomenon to acknowledge. Acknowledgement through hearing one another's stories validates experience and feelings and represents the first step toward the restoration of the person and the relationship. At the same time, Reconciliation must envision the future in a way that enhances interdependence,⁶²⁷ which is illustrated in the expressions of remorse/repentance, apology and forgiveness. It is clear that successful Unity and Reconciliation process, after divisions and violence, therefore necessitates, on the one hand, that the perpetrators voluntarily acknowledge their wrongdoings, repent, and apologize for these evildoings. On the other hand, it becomes much more beneficial when the survivors' voluntary forgiveness is also granted toward renewed relationships. This is indeed the approach that Rwanda adopted. Community-based mechanisms and programs (National summits, Grassroots and community consultations, Ndi Umunyarwanda, National dialogue Council, Itorero, Ingando, Gacaca, etc.), adopted by Rwanda, brought together Rwandans of all walks of life to discuss issues about Rwanda's past while envisioning or planning about the Rwanda's bright future. This, in turn, opened up for expressions of acknowledgement, apology and forgiveness regarding human rights abuses. As indeed pointed out earlier and although this remains a process, these mechanisms and programs enabled an encounter between Genocide perpetrators and survivors and provided a favorable space for perpetrators not only to tell the truth, but also to voluntarily acknowledge their wrongdoings, repent, and apologize for these evildoings, on the one hand, and survivors to forgive them, on the other hand. For example, the Gacaca law indicates a set of incentives that encourage popular participation toward truth telling and wrongdoers to acknowledge their wrongdoings and repent.⁶²⁸ Another example is that, after passing through solidarity camps (Ingando), former Genocide militia put up peacebuilding associations and clubs where they confessed their previous wrongdoing and pledge to build Unity and Reconciliation.⁶²⁹ In this regard, forgiveness—which however does not imply forgetting—entails foregoing feelings of resentment and a desire for revenge against the perpetrators, in a way that reconciles both sides and allows people to deal with memories of the past in a more constructive manner. Rwanda's dialogue-based mechanisms enabled active-public acknowledgment of crimes committed, and left open the possibility for victims to seek redress from perpetrators. Rwanda's approach thus addressed such worries like the thinking that forgiveness will entail the enforced forgetting of crimes, or that perpetrators will not receive the punishment they deserve.

Reference 35 - 0.18% Coverage

In connection with the above statement of a citizen, it appears obvious that to sustain social harmony in Rwanda requires, among other things, that victims or survivors whose properties have been destroyed/looted, during the 1994 Genocide against Tutsi and during past human rights violations, be compensated. However, it was found out that if the guilty individuals have to personally compensate survivors, some of them are not willing to provide the compensation, others do not have sufficient assets to match the injustice committed (properties looted/destroyed), while others simply refuse to do so.⁷⁰¹ The injustices committed, in general, by the genocidal government are also another burden to the Government of National Unity. For example, the debt used by the genocidal Government in buying arms, ammunitions, and machetes, etc., used in perpetrating the Genocide against Tutsis, is being repaid by the current government.⁷⁰² This thus turns to be a burden to the Government of National Unity to repair the

damages caused by forces of the genocidal regime. But, in any case, one whose property has been looted or destroyed should be compensated. This means that one who has destroyed/looted the property should not solely admit and regret his/her wrong doings, apologize for them: in principle s/he should also give compensation. For the moment, none of those prerequisites has been fully met,⁷⁰³ which constitutes one of the major obstacles for the process of Unity and Reconciliation. 6.4. Poverty—socio-economic inequality When people don't live a decent life, in poverty, it is easy for them to engage in wicked actions; a simple trigger is enough for them to engage; because poverty makes it that people accuse/scapegoat each other.⁷⁰⁴ The eradication of poverty is both a challenging and uphill struggle for a country with a tragic conflict-fuelled history such as Rwanda. The Genocide and war destroyed the macro-economic and institutional infrastructure necessary for the successful growth of a modern, market-based economy.⁷⁰⁵

Reference 36 - 0.16% Coverage

The mainstreaming of Unity and Reconciliation in all development efforts in Rwanda, as indeed emphasized in Rwanda's Economic Development and Poverty Reduction Strategy (EDPRS), embodied in Vision 2020, will be made sure that it is well implemented. This is so put given that the EDPRS and vision 2020 strive, among other things, to promote Unity and Reconciliation by promoting good governance and decentralization, with the purpose of enhancing trust, rule of law, promotion of human rights and social cohesion.⁷¹⁷ The two EDPRSs that Rwanda has so far experienced (the first EDPRS, from 2008 to 2012, and the second EDPRS, for 2013-2018) emphasize the mainstreaming of Unity and Reconciliation in all development programs of the country. Strategies emphasized in the second EDPRS document (2013-2018) aim at enhancing dialogue at grassroots level with the ultimate objective of restoring social relationships as well as rebuilding trust that was destroyed by the divisive past and especially the 1994 Genocide against Tutsi.⁷¹⁸ The document recognizes that Unity and Reconciliation cannot be possible with counterfactual information on Rwandan history and Genocide. In this regard, the plan is that efforts will be directed to encouraging national and international writers to record and publish factual accounts on Rwanda, the Genocide against Tutsi, and Reconciliation endeavors.⁷¹⁹ 7.3. Keeping war against Genocide ideology, denial, and divisions One of the causes of the 1994 Genocide [against Tutsi] in Rwanda was a culture of impunity, as political leaders were rarely held accountable for their crimes, thus encouraging them to continue orchestrating violence and creating the conditions whereby mass crime such as Genocide became possible.⁷²⁰

Reference 37 - 0.20% Coverage

The purpose of this book was to provide an answer to the question regarding how to move from a destroyed society and a failed state to a united and reconciled one. The book did so by providing and discussing the experience of Rwanda, a country whose Unity and nationhood had been destroyed by colonial power's divisive agenda and sustained by postcolonial two governments, which culminated into the 1994 Genocide against Tutsi. The post Genocide new Government of National Unity, led by the RPF, successfully engaged in rebuilding Rwanda as a reconciled and re-united nation-state, a difficult task that was thought by many as impossible.⁷³² The book has indicated a number of mechanisms, approaches and strategies adopted by Rwanda toward Unity and Reconciliation, which are indeed unique. For example, it is only in Rwanda, where citizens themselves (RPA, in this case) stood up and halted human rights abuses and, above all, the Genocide whilst the international community had failed. Rwanda also stands as one of the countries that have had a very big number of refugees (more than 5 million), who have been successfully repatriated, resettled, and reintegrated by the Government on its own initiative and on a short period of time, while putting an end to the forced refugee status. Another example is that nowhere else, except in Rwanda, where the former enemy combatants have successfully been integrated

by Rwandans themselves (the government and its citizens) into one, professional and united, body of security forces. At this level, Rwanda's inclusive, voluntary-based, and mutually educative approach to military integration (Ingando) is particularly unique and much constructive in comparison with the models of peace building that exist so far and that solely limit to either the forced disarmament by external intervention; the demobilization that excludes former enemy combatants; or the mediation-based military integration that requires the help of a third party. In fact, in the immediate aftermath of the 1994 Genocide against Tutsi, the journey toward the process of Unity and Reconciliation in Rwanda has been the initiative and commitment of

Reference 38 - 0.02% Coverage

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Sierra Leone - TRC Report-FULL> - § 548 references coded [2.60% Coverage]

Reference 1 - 0.01% Coverage

American Association for the Advancement Science/Human Rights Programme

Reference 2 - 0.01% Coverage

Gemeinschaft Technischer Zusammenarbeit (German Institute for Technical Cooperation) Heavily Indebted Poor Countries Initiative Human Rights Commission

Reference 3 - 0.01% Coverage

Belgium High Diamond Council Human Rights Data Analysis Group
Human Rights Information Management System International Criminal Court

Reference 4 - 0.01% Coverage

International Human Rights Law Group International Labour Organisation International Medical Corps
Information Management Unit

Reference 5 - 0.01% Coverage

National Commission for Democracy and Human Rights

Reference 6 - 0.01% Coverage

National Forum for Human Rights Non Governmental Organisation Nigerian Battalion Nigerian
Contingent

Reference 7 - 0.01% Coverage

Office of the High Commissioner for Human Rights Operational Support Division

Reference 8 - 0.01% Coverage

Pan African Union Organisation Princess Christian Maternity Hospital Protectorate Education Progressive
Union Public Expenditure Tracking Survey Physicians for Human Rights Precious Metals Mining Company
Peoples National Party Peoples Party

Reference 9 - 0.01% Coverage

The Commission's findings force us as a nation to confront the past. They reinforce the belief that the past cannot, indeed must not, be forgotten. Forgetting or ignoring the past means we cannot learn its lessons and are at greater risk of repeating it. Through attributing responsibility for the different causes of the conflict, and the many violations of human rights committed throughout it, we create accountability and state unequivocally that we reject impunity. With this knowledge and understanding we vow to build a society that will be able to prevent such causes and violations from recurring.

Reference 10 - 0.01% Coverage

Our ultimate goal of peace and reconciliation will be reached if all living within its borders sincerely respect the human rights of all, without exception. We must reaffirm our resolve to live in a nation where justice reigns, where nobody is above the law, where unity and tolerance is the order of the day, where genuine democracy thrives, and where love and concern for each other and our country is paramount. True reconciliation requires real consideration for the total well being of all our citizens – including children,

Reference 11 - 0.02% Coverage

I wish to acknowledge and pay tribute to the many organisations and individuals that made possible the fulfilment of the Commission's mandate. Firstly, I wish to express my deep appreciation to several donor countries that supplied financial support: the European Commission, the United States of America, the United Kingdom, Norway, the Netherlands, Switzerland, Germany, Canada, Ireland, Sweden, France and Luxembourg. I wish to pay tribute to Mrs. Mary Robinson, the former United Nations High Commissioner for Human Rights, whose vision ensured the realisation of this Commission. Several persons in the Office of the High Commissioner for Human Rights played key roles in establishing and supporting the Commission, including Mr. Jan Cedergren, former Chief of Activities and Programmes Branch, Ms. Tokunbo Ige, African Team Coordinator, and Mr. Martin Ejidike, the Desk Officer for Sierra Leone. The Commission received valuable administrative and logistical support from United Nations Development Programme (UNDP) and the United Nations Mission in Sierra Leone (UNAMSIL). In particular, I would like to thank the members of the Human Rights Section and of the Media and Public Education Department of UNAMSIL for their unwavering support for the Commission's work. I extend my appreciation to the President of Sierra Leone, Dr. Ahmad Tejan Kabbah and the Government of Sierra Leone for their committed support to the on-going and long-term truth and reconciliation process. Several organisations, both within and outside Sierra Leone, played significant roles in promoting the work of the Commission. Within Sierra Leone such organisations included the Campaign for Good Governance, the National Forum for Human Rights, the print and broadcast media and the Inter Religious Council. The Truth and Reconciliation Working Group served as a useful liaison between the Commission and the NGO community. UNICEF provided support to the Commission and enabled it to publish the Children's Version of the Report. The Commission wishes to thank Saudamini Siegrist for her dedication in compiling the Children's Version. UNIFEM supplied advice and resources to assist the Commission to address the role of women in the conflict. WITNESS produced a video version of the Report and the Commission wishes to express its gratitude to Gillian Caldwell, Louis Spitzer and Tijanie Bah. The International Centre for Transitional Justice (ICTJ) supplied valuable support and input, and the Commission wishes to thank in particular Marieke Wierda who was always available for advice and counsel. The ICTJ provided consultants to the Commission and also supplied financial support for and the National Vision for Sierra Leone.

Reference 12 - 0.01% Coverage

Mr Oluyemi Adeniji, SRSG (left) and Mr Bacre Ndiaye, Special Representative of the UN High Commissioner for Human Rights at the inauguration of the Commission on July 5, 2002

Reference 13 - 0.01% Coverage

Establishing the truth and achieving reconciliation is an ambitious project for any country struggling to overcome the bitterness of strife and war. This was particularly the case for Sierra Leone. The country was devastated by nearly a decade of civil war. Sierra Leone had become one of the poorest countries in the world. It took several years to establish the Commission. During this period, further disturbances broke out in parts of the country, which prompted the Government of Sierra Leone and the international community to take the initiative of establishing a Special Court for Sierra Leone. The Special Court was tasked with prosecuting those who bore the greatest responsibility for serious violations of human rights. All these factors impacted on the work of the Commission.

Reference 14 - 0.01% Coverage

The Commission was supported in its efforts to raise funds through the United Nations Office of the High Commissioner for Human Rights (OHCHR). In view of the Commission's short timeframe, donors were skeptical about its capacity to realize its mandate. The Commission encountered difficulties in reaching its original funding target of \$9.9 million. The Commission's requirements were later realigned to meet the funding prospects while maintaining a credible institution. It became clear from the outset that the establishment of the Commission was beset with problems. This further complicated the Commission's ability to raise sufficient funding. Less than half the funds pledged eventually found their way to the Commission.

Reference 15 - 0.01% Coverage

The first objective of the Commission, as established by the Act, was to create an impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone. The Parliament of Sierra Leone recognized that such a record would form the basis for the task of preventing the recurrence of violence.⁹ Several of the themes focused on by the Commission comprise the historical record of the conflict. The Commission does not claim to have produced the complete or exhaustive historical record of the conflict. The Commission is however satisfied that it has provided an essential version of the armed conflict, which includes an account of its main events and how it started. At times, this story accords with popular views of the conflict. At other times, the Commission's record of the conflict departs from popular history and debunks certain myths and untruths about the conflict.

Reference 16 - 0.01% Coverage

11. While there were many factors, both internal and external, that explain the cause of the civil war, the Commission came to the conclusion that it was years of bad governance, endemic corruption and the denial of basic human rights that created the deplorable conditions that made conflict inevitable. Successive regimes became increasingly impervious to the wishes and needs of the majority. Instead of implementing positive and progressive policies, each regime perpetuated the ills and self-serving machinations left behind by its predecessor. By the start of the conflict, the nation had been stripped of its dignity. Institutional collapse reduced the vast majority of people into a state of deprivation. Government accountability was non-existent. Political expression and dissent had been crushed. Democracy and the rule of law were dead. By 1991, Sierra Leone was a deeply divided society and full of the potential for violence. It required only the slightest spark for this violence to be ignited. The Commission traced the roots of these lapses through the post-independence period and into the colonial period in the chapters entitled "Historical Antecedents to the Conflict"¹⁰ and "Governance".¹¹

Reference 17 - 0.01% Coverage

The story of the war reveals how Sierra Leoneans were denied their humanity and underscores the need for the creation of a human rights culture in Sierra Leone. A rights culture is one in which there is knowledge and recognition of the basic rights to which all human beings are entitled as well as a sense of responsibility to build it. A rights culture demands that we respect each other's human rights, without exception. Among its recommendations to protect human rights the Commission recommends the immediate release of all those held in safe custody detention and that such detention never be resorted to again. The Commission also recommends significant changes to the legal regime governing public emergencies.¹⁵

Reference 18 - 0.01% Coverage

The overwhelming majority of atrocities were committed by Sierra Leoneans against Sierra Leoneans. All the fighting factions targeted civilians. The Commission found the leadership of the Revolutionary United Front (RUF), the Armed Forces Revolutionary Council (AFRC), the Sierra Leone Army (SLA) and the Civil Defense Forces (CDF) to be responsible for either authorising or instigating human rights violations against civilians; alternatively for failing to stop such practices or to speak out against them. Sierra Leone was systematically plundered and looted by all factions in the conflict. The Commission found the RUF to have been responsible for the largest number of human rights violations in the conflict. The reader is referred to Chapter One in Volume 4 (the Appendix) of this report for a detailed explanation of how the Commission's database represents the abuses experienced during the war in Sierra Leone.

Reference 19 - 0.01% Coverage

The Commission's enabling Act required it to give special attention to the experiences of children in the armed conflict.²² Children were singled out for some of the most brutal violations of human rights recorded in any conflict. The Sierra Leonean conflict was characterised by the pernicious strategy employed by most of the factions in forcing children into combat. The Commission found it most disturbing that children were the main victims in the following violations: drugging²³, forced recruitment, rape, and sexual assault. The Commission found that children between the ages of 10 to 14 were specifically targeted for forced recruitment, rape, and sexual slavery.²⁴ Children were also forced, often under the threat of death, to commit a range of atrocities.

Reference 20 - 0.01% Coverage

• External Actors • The Judiciary, the Rule of Law and the Promotion of Human Rights • Youth •

Reference 21 - 0.01% Coverage

The recommendations cover the following areas and themes: the Protection of Human Rights, Establishing the Rule of Law, the Security Services, Promoting Good Governance, Fighting Corruption, Youth, Women, Children, External Actors, Mineral Resources, The Commission and the Special Court, Reparations, Reconciliation, National Vision for Sierra Leone, Archiving, Dissemination of The Commission's Report, and the Follow-Up Committee.

Reference 22 - 0.01% Coverage

The Commission proposes that the Reparations programme be co-ordinated by the National Commission for Social Action (NaCSA). It is envisaged that NaCSA as the "Implementing Body" entrusted with governing the Special Fund for War Victims, will ensure the decentralisation of programmes in conjunction with different Ministries. It is proposed further that NaCSA be assisted by an Advisory Committee. The Commission recommends that the proposed National Human Rights Commission perform the role of the Advisory Committee.

Reference 23 - 0.01% Coverage

Produced by the TRC Steering Committee with support from the International Human Rights Law Group

Reference 24 - 0.01% Coverage

Truth and Reconciliation Commissions had been established in many countries following periods of protracted internal conflict, and were widely believed to provide an important mechanism for transitional justice. Generally, they have been presented as an alternative to judicial prosecution for atrocities, especially in cases where political exigencies made this unlikely or impossible. In the case of Sierra Leone, this was quite explicit. The creation of the Commission was provided for in the Lomé Peace Agreement of 7 July 1999. Article IX of the Lomé Peace Agreement provided a pardon and amnesty for participants in the conflict. The Commission was therefore viewed as the principal means of providing a degree of accountability for human rights abuses committed during the conflict.

Reference 25 - 0.01% Coverage

ARTICLE XXVI HUMAN RIGHTS VIOLATIONS

1. A Truth and Reconciliation Commission shall be established to address impunity, break the cycle of violence, provide a forum for both the victims and perpetrators of human rights violations to tell their story, get a clear picture of the past in order to facilitate genuine healing and reconciliation.
2. In the spirit of national reconciliation, the Commission shall deal with the question of human rights violations since the beginning of the Sierra Leonean conflict in 1991. This Commission shall, among other things, recommend measures to be taken for the rehabilitation of victims of human rights violations.

Reference 26 - 0.01% Coverage

6. (1) The object for which the Commission is established is to create an impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone, from the beginning of the Conflict in 1991 to the signing

Reference 27 - 0.01% Coverage

The Memorandum of Objects and Reasons is not, strictly speaking, part of the enacted legislation creating the Commission. Nevertheless, as an attachment to the Bill presented to Parliament, it is of considerable significance for the interpretation of provisions of the Act that was eventually adopted. It provides useful guidance as to Parliamentary intent at the time the legislation was enacted. Several phrases in the Memorandum of Objects and Reasons are of particular relevance, notably the reference to the proceedings of the Commission 'as a catharsis for constructive interchange between the victims and perpetrators of human rights violations and abuses', and the intent that the Commission 'compile 'a clear picture of the past''. Also of interest is the suggestion that clause 6 of the Act refers to 'the principal

function of the Commission' as being 'to create an impartial historical record of events in question as the basis for the task of preventing their recurrence'. In fact, section 6 of the Act lists five distinct 'objects' of the Commission, and suggests no hierarchy between them. The Memorandum of Objects and Reasons provides a helpful perspective for the interpretation of the various components of section 6 of the Act. Here is the text in full:

Reference 28 - 0.01% Coverage

Section 1 of Article XXVI of the Peace Agreement envisaged the proceedings of the Commission as a catharsis for constructive interchange between the victims and perpetrators of human rights violations and abuses and from this catharsis the Commission is to compile 'a clear picture of the past'. Accordingly, by clause 6, the principal function of the Commission is to create an impartial historical record of events in question as the basis for the task of preventing their recurrence.

Reference 29 - 0.01% Coverage

In the words of the President, at the swearing in ceremony of the Commissioners held on 5 July 2002, in Freetown, 'the Commission will investigate and report on the causes, nature and extent of the violations and abuses of human rights and international humanitarian law during the conflict. Of course it will create an impartial historical record of the atrocities perpetrated against innocent civilians during a ten-year period of the war. However, it is absolutely necessary that we look beyond those functions, and see the work of the TRC as a therapeutic process. It was a brutal war. It caused grievous physical and emotional damage for thousands of our compatriots. It also created divisions between families, and among neighbours and friends. To a large extent the conflict also fractured the body politic of the nation. Well, the guns may be silent, but the trauma of the war lingers on. We have a great deal of healing to do. This is why the TRC is, and should also be seen, as an instrument of national reconciliation, and another means of strengthening the peace.'

Reference 30 - 0.01% Coverage

The Commission is one of the accountability mechanisms established to deal with the human rights abuses that occurred during the armed conflict. Sierra Leone's transition from armed conflict to peace came about as a result of a peaceful negotiated settlement of the conflict between the government of Sierra Leone and the Revolutionary United Front, with the signing of the Lome Peace Accord on 7 July 1999. The process began in the aftermath of the January 1999 invasion of Freetown. The Government of Sierra Leone proposed that the Abidjan Peace Accord should serve as a basis for negotiations. In his address to the nation, on 7 February 1999, President Kabbah called upon the nation and civil society groups to consult and build consensus around the Abidjan Peace Accord in that regard.

Reference 31 - 0.01% Coverage

Civil society groups supported the Government's proposals for peace talks. However, while endorsing in general terms the government's decision to use the Abidjan Peace Accord as the basis for future dialogue with the rebels, the Human Rights Committee expressed reservation with regard to certain articles in the Abidjan Peace Accord, particularly Article 14, which appears to confer blanket immunity on all perpetrators of human rights violations in Sierra Leone. The Committee was of the view that while it was important to look forward rather than to the past during this critical peace process, the disturbing cycle of

impunity in Sierra Leone could not be broken unless there was some form of censure or punishment to some perpetrators of gross abuses of human rights in the country.

'Accordingly therefore, the Committee proposed the creation of a Truth, Justice and Reconciliation Commission in Sierra Leone which will, inter alia, enable the country to cope with the aftermath of the crisis by hearing the truth directly from perpetrators of gross human rights violations, help survivors of violations cope with their trauma, and recommend judicial prosecutions for some of the worst perpetrators of the violations. This Commission will be an independent structure comprising personalities of unimpeachable moral probity.'¹

Reference 32 - 0.01% Coverage

Paragraph 3 of Recommendations adopted by the Human Rights Committee on February 19, 1999 regarding the Sierra Leonean Peace Process. Human Rights Committee is a coalition of international and local human rights NGOs. Interview with Joseph Rahall, Chairman, National Forum for Human Rights, a coalition of Local Human Rights and Development Organisations. See also Interview with John Caulker, Executive Director, Forum of Conscience and Chairman of Truth and Reconciliation Commission Working Group, Freetown 16 December 2003.

Reference 33 - 0.01% Coverage

In its desire to have human rights issues addressed as part of the peace process, civil society through the United Nations Mission in Sierra Leone (UNAMSIL) facilitated the visit of the United Nations High Commissioner for Human Rights, Mary Robinson, to Sierra Leone in June 1999. The essence of the visit was to lend the support of her office to the dialogue of peaceful negotiation, and also to add to the momentum gathered for the need to address human rights violations as well as the building of a culture of respect for human rights. During her visit, the Government, human rights, NGOs represented by the National Forum for Human Rights and the National Commission for Democracy and Human Rights,³ signed a human rights manifesto in which the parties agreed, among other things, that a truth and reconciliation commission should be established as an accountability mechanism to deal with the abuses which had occurred during the conflict.⁴

Reference 34 - 0.01% Coverage

The National Forum is a Federation of Local Human Rights NGOs and Development Organisations. See Article 4 of the Human Rights Manifesto.

Reference 35 - 0.01% Coverage

The statutory definition of the 'object' of the Commission, in section 6(1), consists of an enumeration of five distinct elements. But these are separated by a semi-colon into two groups. The first comprises only one element, 'to create an impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone, from the beginning of the Conflict in 1991 to the signing of the Lome Peace Agreement'. The second comprises the other four: to address impunity, to respond to the needs of the victims, to promote healing and reconciliation and to prevent a repetition of the violations and abuses suffered. No ranking or hierarchy is established in the legislation among the five elements or the two groups. But the Statement of Objects and Reasons, which was attached to the Bill when it was enacted by Parliament, says that 'the principal function of the Commission is to create an impartial historical record of events in question as the basis for the task of

preventing their recurrence'. There can therefore be no doubt that the creation of an impartial historical record lies at the core of the Commission's mandate.

Reference 36 - 0.01% Coverage

On the other hand, the Lomé Peace Agreement implies somewhat different priorities: 'A Truth and Reconciliation Commission shall be established to address impunity, break the cycle of violence, provide a forum for both the victims and perpetrators of human rights violations to tell their story, get a clear picture of the past in order to facilitate genuine healing and reconciliation.' Here, the only implication of the mission of the Commission as historian is the

Reference 37 - 0.01% Coverage

were crucial to its work. The Act envisioned a Commission composed of four nationals and three non-nationals to enhance the credibility of this process. The three non-nationals were selected by the United Nations High Commissioner for Human Rights, whose integrity is beyond question. The nationals were chosen as part of a transparent selection process overseen by the Special Representative of the Secretary-General of the United Nations to Sierra Leone. Commissioners were provided with terms and conditions of employment, as well as various legal immunities and protections, to further assure their independence and impartiality.

Reference 38 - 0.01% Coverage

The 'Memorandum of Objects and Reasons', which is attached to the TRC Act, notes that the Peace Agreement 'envisaged the proceedings of the Commission as a catharsis for constructive interchange between the victims and perpetrators of human rights violations and abuses'.

Reference 39 - 0.01% Coverage

It should be noted that, in the Lomé Agreement, the references (art. XXVI) are to 'human rights violations', and not to 'violations and abuses'. The word

Reference 40 - 0.01% Coverage

The TRC Act does not define what constitute violations and abuses with regard to international human rights law and international humanitarian law. The term 'violations and abuses' does not appear to have any recognised technical meaning within either human rights law or international humanitarian law. Obviously, there is a literal meaning of the two terms which should require no further explanation.

Reference 41 - 0.01% Coverage

Of some interest within the field of international human rights law is the frequent use of the term 'abuse' in a very recent instrument, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted in July 2003. It uses the term 'abuse' in several provisions (articles 5(d), 12(1)(c), 12(1)(d), 13(m), 22(b), 23(b)). The context suggests that the term is used particularly with reference to acts committed by individuals against other individuals, rather than by States.¹²

Reference 42 - 0.01% Coverage

There does exist within human rights and international humanitarian law a number of more specific terms to describe certain types of violation or abuse. These include: breaches, grave breaches, serious violations, gross and systematic violations, and so on. For example, in 2000, when the United Nations Human Rights Committee found that Sierra Leone had violated the Optional Protocol to the International Covenant on Civil and Political Rights for proceeding with twelve executions on 19 October 1998 despite an interim measures request from the Committee that it stay the executions pending consideration of a petition, the Committee described this as a 'grave breach' of the Optional Protocol.¹³ In fact, nowhere does the Optional Protocol speak of 'grave breaches', referring instead to 'violation'; the Covenant itself refers cautiously to 'not fulfilling' and 'not giving effect to' obligations.

Reference 43 - 0.01% Coverage

3(1) a. of the South African TRC Act provides: 'Establish as complete a picture as possible of the causes, nature, and extent of the gross violations of human rights which were committed during the period from 1 March 1960 to the cut-off date, including the antecedents circumstances, factors and context of such violations, as well as the perspectives of the victims and motives and perspectives of the conducting investigations and holding hearings.'

Reference 44 - 0.01% Coverage

The same expression appears in an earlier instrument, the Declaration on the Elimination of Violence Against Women, GA Res. 48/104, art. 2(a) and (b). The Vienna Declaration and Programme of Action of 1993 also refers to 'gender-specific abuses' and 'human rights abuses particular to women' (para. 42), 'abuse of children' (para. 48).

Reference 45 - 0.01% Coverage

Human rights and international humanitarian law treaties are meant to bind sovereign states to various obligations. In principle, an individual cannot 'violate' a human rights treaty, as this is a form of contract or undertaking between sovereign states. Nevertheless, the African Charter on Human and Peoples' Rights, for example, establishes a list of 'duties' that apply to 'every individual'. Some violations of international humanitarian law, known colloquially as 'war crimes', are in effect – but by exception – applicable directly to individuals.

Reference 46 - 0.01% Coverage

Under certain circumstances, a State may be held responsible for acts or omissions that constitute violations or abuses of human rights when committed by an individual or group under its control, or over which it has some responsibility. A State is expected to exercise due diligence in preventing individuals from violating the human rights of other individuals. The term 'horizontal violations of human rights' is used in this context. An example would be the duty upon State authorities to ensure that a prisoner under their care is not victim of abuse by other prisoners.

Reference 47 - 0.01% Coverage

There is a growing body of law to support the idea of the involvement of 'nonstate actors' in violations or abuses of human rights. 'Non-state actors', be they individuals, groups or organisations, are neither

parties to international human rights or international humanitarian law treaties nor are they, as a general rule, bound by national constitutions. Nevertheless, it may be possible to impute certain violations and abuses of human rights and international humanitarian law to them.

Reference 48 - 0.01% Coverage

This would indeed seem to be the implication of the Act, with the reference to 'perpetrators of human rights violations and abuses' in the Memorandum of Objects and Reasons. That individuals and not only states or state-like bodies are contemplated is confirmed by the reference to 'child perpetrators of abuses or violations'. This is also suggested by section 6(2)(a), which asks 'whether those violations and abuses were the result of deliberate planning, policy or authorisation by any government, group or individual'.

Reference 49 - 0.01% Coverage

Individual perpetrators may be both natural persons and corporate bodies, such as transnational companies or corporations. But this leads to other difficulties. For example, let us consider the case of a transnational mining company operating in Sierra Leone but whose head office is in another country, say, South Africa. Although described colloquially as 'transnational', the company will in fact have the nationality of the State where it has its head office. Can South Africa be blamed for human rights violations committed by the company

Reference 50 - 0.01% Coverage

in Sierra Leone, for failing to regulate the activities of its company, in the same way that it might be blamed for human rights violations committed by the company in South Africa itself? Objections to the imputation of such liability may come not only from South Africa, but from Sierra Leone itself. Sierra Leone might consider attempts by South Africa to regulate the behaviour of South Africans within Sierra Leone as an infringement on the latter's sovereignty. Yet the TRC might well conclude that violations and abuses of human rights were committed in Sierra Leone not only by the hypothetical South African mining company, but also by both Sierra Leone and South Africa for failing to regulate it.

Reference 51 - 0.01% Coverage

In the light of the reference to 'violations and abuses', the Commission has decided that its mandate is a very broad one. It is not limited by use of adjectives such as 'gross' or 'serious'. The addition of the term 'abuses', which may be taken to encompass human rights violations committed by individuals rather than States or governments, enlarges rather than restricts the mandate. Accordingly, the Commission's mandate is not confined to violations of human rights that might constitute crimes, under either national or international law, nor is it limited to violations committed by States or governments.

'Human Rights and International Humanitarian Law' 47.

According to section 6(1) of the Act, the 'violations and abuses' must be of 'human rights and international humanitarian law'. This is a reference to two distinct, although related, bodies of international law. The distinct scope of each body of law, as well as the relationship between the two, shall be considered in turn.

Reference 52 - 0.01% Coverage

'Human rights' is a term used to describe a broad spectrum of rights that may belong to individuals, groups (such as ethnic and religious minorities) and 'peoples'. Human rights are those basic standards inherent to the human being without which a person cannot live in dignity. Human rights are entitlements, which every human being possesses by virtue of his or her humanity. Guarantees of human rights are expressed in both international and national law.

Reference 53 - 0.01% Coverage

The 1991 Constitution of Sierra Leone devotes a lengthy section, Chapter III, to 'human rights and fundamental freedoms'. The formulation is awkward and unduly complex, making it inaccessible to the average citizen. Many of the provisions are devoted more to exceptions to human rights than to their affirmation. There is an exhaustive provision dealing with the use of emergency powers and the suspension of constitutional protections. The language is consistent with that in the constitutions of many other former British colonies, and reflects an historic unease of English lawmakers with the constitutional entrenchment of fundamental rights. For the purposes of the TRC's work, there is no significance in the distinction between 'human rights' and 'fundamental freedoms'; both terms can be subsumed within the expression 'human rights'.

Reference 54 - 0.01% Coverage

The Lomé Peace Agreement attempts a definition of the term 'human rights' that is probably more helpful than that of the 1991 Constitution in this respect. It makes a useful reference to international legal sources, such as the Universal Declaration of Human Rights and the African Charter of Human and Peoples'

Reference 55 - 0.01% Coverage

ARTICLE XXIV GUARANTEE AND PROMOTION OF HUMAN RIGHTS

1. The basic civil and political liberties recognized by the Sierra Leone legal system and contained in the declarations and principles of Human Rights adopted by the UN and OAU, especially the Universal Declaration of Human Rights and the African Charter on Human and Peoples Rights, shall be fully protected and promoted within Sierra Leonean society.

Reference 56 - 0.01% Coverage

The sources of international human rights law are in treaties, bodies of principles and customary international law. The Government of Sierra Leone is legally bound by many of the most important international human rights law treaties, by virtue of its ratification or accession. This is the case with such instruments as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the African Charter of Human and Peoples' Rights. But Sierra Leone is also subject to various other standardsetting instruments of which the most important is the Universal Declaration of Human Rights, adopted by the United Nations General Assembly on 10 December 1948.

Reference 57 - 0.02% Coverage

Human rights are sometimes classified into civil, political, economic, social and cultural rights. They range from rights which contemplate the core values of human dignity, like the right to life and the prohibition

of torture, to the right to housing and medical care. Efforts to separate human rights into categories of 'civil and political' as opposed to 'economic and social', which have characterised human rights law in the past and which reflected geo-political conflicts, have been rejected in favour of a more holistic approach sometimes described as 'indivisibility' of human rights. Thus, human rights are acknowledged as being universal, interrelated, indivisible and interdependent. The preamble to the African Charter on Human and Peoples' Rights states 'that it is henceforth essential to pay a particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as the universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights'. The Universal Declaration of Human Rights contains civil, political, economic, social and cultural rights, and makes no distinction between them. In any event, human rights violations and abuses will often have both civil or political and economic, social and cultural dimensions. Moreover, certain specific rights, such as the right to a fair trial, which are usually categorised as 'civil', have an economic dimension too. Indeed, although wartime atrocities usually involve the 'core' human rights, like the right to life and the protection against cruel and inhuman treatment, the conflict in Sierra Leone may also have involved, and have been caused by,

Reference 58 - 0.01% Coverage

It might be argued that the human rights dimension of the Commission's mandate is narrower than has been proposed above, and that it should be defined essentially with respect to the Constitution of Sierra Leone and the human rights treaties ratified by Sierra Leone. This might suggest a somewhat narrower approach. However, the Commission's mandate extends well beyond an examination of the compliance of the Government of Sierra Leone with its legal obligations. The Act requires the Commission to consider a range of nonstate actors, including armed groups, as well as 'external factors', which may even involve consideration of the role of foreign governments and international organisations. Thus section 6(2) of the Act refers to 'the question of whether those violations and abuses were the result of deliberate planning, policy authorisation by any government'. For these reasons, it would be incorrect for the Commission to confine its examination of human rights to those that find expression in the Constitution of Sierra Leone and those international instruments to which Sierra Leone is a party.

Reference 59 - 0.01% Coverage

For the purposes of its work, the Commission decided to adopt a broad view of the concept of human rights, using as its touchstones the Universal Declaration of Human Rights and the African Charter on Human and Peoples' Rights. It does not confine its approach to the legal obligations imposed upon the government of Sierra Leone by international or national law. Violations of economic, social and cultural rights as well as of civil and political rights have been examined, as well as other categories of rights such as the right to development and the right to peace.

Reference 60 - 0.01% Coverage

The conclusion that a broad approach to human rights is required, also finds support in the reference in the TRC Act which mandates the Commission to pay 'special attention to the subject of sexual abuses and to the experiences of children within the armed conflict'. Such issues might not be subsumed within a mandate focussed only on the 'core' civil and political rights listed in article XXIV of the Lomé Peace Agreement or the Constitution. To supplement the basic international human rights instruments referred to in the preceding paragraph, the Commission has sought guidance from specialised instruments in the area of the rights of women and children, such as the Convention on the Rights of the Child, the African

Convention on the Rights and Welfare of the Child, the Convention on the Elimination of Discrimination Against Women, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa and various United Nations and African Union declarations concerning sexual abuse of children and violence against women.

Reference 61 - 0.01% Coverage

Section 6(1) of the Act also instructs the Commission to prepare an impartial historical record of violations and abuses of 'international humanitarian law'. The term 'international humanitarian law' has been described as a 'more recent and comprehensive' term for what in the past was referred to as the 'international law of armed conflict', or even earlier, the 'law of war'. According to the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia, in the authoritative statement on the subject, the term 'international humanitarian law' emerged 'as a result of the influence of human rights doctrines on the law of armed conflict'.¹⁸

Reference 62 - 0.01% Coverage

In principle, 'international humanitarian law' applies only during armed conflict, as opposed to human rights law, which applies during peacetime as well as wartime. According to the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia, 'an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organised armed groups or between such groups within a State. International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is achieved. Until that moment, international humanitarian law continues to apply in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there.¹⁹ With regard to its work the Commission has assumed the existence of armed conflict throughout the time frame defined in section 6(1) of the Act. It seems appropriate to consider that international humanitarian law continued to apply within Sierra Leone subsequent to the Lomé Peace Agreement and probably until 18 January 2002, when the conflict was officially declared to have come to an end.

Reference 63 - 0.01% Coverage

The norms and principles of international humanitarian law have been codified in several quite complex international treaties, of which the 1949 Geneva Conventions and their two Additional Protocols stand at the centre. To a large extent, these principles are similar to those contained in the main human rights treaties, with the important distinction that the international humanitarian law instruments apply only during armed conflict. Given that the mandate of the Commission is concerned essentially with violations and abuses related to the conflict, the relevance and application of international humanitarian law can be taken as a given. Sierra Leone is a party to the main international humanitarian law treaties. But for the same reasons discussed above with respect to international human rights instruments, whether or not Sierra Leone is legally bound by a particular treaty or body of norms does not define the mandate of the Commission, given that it is to report on violations and abuses committed by non-State actors as well as by the Government of Sierra Leone and other governments.

Reference 64 - 0.01% Coverage

Section 6(1) of the Act limits the scope of the impartial historical record to be prepared by the Commission to those violations and abuses of human rights and international humanitarian law that are 'related to the armed conflict in Sierra Leone'. In other words, not all violations and abuses of human rights and international humanitarian law fall within the ambit of the work of the Commission. This reference has consequences in terms of the time frame and territory addressed by the Commission, as well as the actual substance of the violations and abuses.

Reference 65 - 0.01% Coverage

The reference to a relationship to the armed conflict also has a substantive limitation on the mandate of the Commission. Obviously, not all violations of human rights committed within Sierra Leone during the 1990s can be considered to be 'related to the armed conflict'. For example, the practice of female genital mutilation is and has for many years been widespread within Sierra Leone. It continued to be practiced during the period of the conflict. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa refers to female genital mutilation as a harmful practice which violates the rights of women and which must be prohibited (art. 5(b)). It is probably unreasonable, however, to refer to female genital mutilation as a human rights violation or abuse that was 'related to the armed conflict'. Nevertheless, it might well be argued that the practice of female genital mutilation contributed to a context of oppression and marginalisation of women that was manifested in violations and abuses that were unquestionably related to the armed conflict, such as gang rapes and sexual slavery.

Reference 66 - 0.01% Coverage

Human rights law applies in both peacetime and wartime, whereas international humanitarian law's application is confined to wartime alone, as a general rule. The two bodies of law are largely complementary. There is some authority for the proposition that international humanitarian law represents a kind of special law (or *lex specialis*) that in effect takes the place of human rights law during armed conflict. However, the international human rights conventions clearly contemplate their application during wartime, subject to the possibility that certain rights are limited or suspended because of the emergency situation.

Reference 67 - 0.01% Coverage

International humanitarian law has always represented a compromise between the protection of the rights of non-combatant civilians and the requirements of military necessity. It recognizes that, under some circumstances, civilian lives may be taken where this is necessary for the attainment of military objectives, subject to the criterion of proportionality. But, under human rights law, there is virtually no situation where the killing of an innocent civilian can be tolerated. If the view were to be adopted that human rights law is, in a sense, superseded by the special rules of international humanitarian law, the Commission would be required to be considerably more tolerant of the killing and injury of innocent civilians than were in the case where the two bodies of law are viewed as providing two complementary but distinct levels of protection. In practice, given the nature of the conflict in Sierra Leone and the low level of humanitarian principles followed by the combatants, there were no situations where the Commission might be required to address a potential conflict between conduct

Reference 68 - 0.01% Coverage

authorized by international humanitarian law yet prohibited by international human rights law.

Reference 69 - 0.01% Coverage

The second limb of the 'object' of the Commission consists of four elements, the first being 'to address impunity'. Article XXVI of the Lomé Agreement listed this as the first of the functions of the proposed the TRC. The reference to impunity is somewhat enigmatic, given that the Lomé Agreement, in granting pardon and amnesty to the perpetrators of human rights and international humanitarian law violations and abuses, constitutes one of the more striking grants of impunity in recent history. The paradox of the Lomé Agreement, and of the Truth and Reconciliation Act 2000 that was adopted to give effect to certain of its provisions, is that it both enshrines impunity and seeks to address it.

Reference 70 - 0.01% Coverage

According to one of the world's experts on the subject, Louis Joinet, who was the Special Rapporteur of the United Sub-Commission for the Promotion and Protection of Human Rights, "Impunity" means the impossibility, de jure or de facto, of bringing the perpetrators of human rights violations to account - whether in criminal, civil, administrative or disciplinary proceedings - since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, convicted, and to reparations being made to their

Reference 71 - 0.01% Coverage

victims'.²⁴ Louis Joinet devised a 'Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity'.²⁵ These served as an extremely useful set of guidelines for the Commission in the interpretation of its mandate to address impunity.

Reference 72 - 0.01% Coverage

According to Joinet, the right to know comprises what he calls 'the inalienable right to the truth'. He says: 'Every people has the inalienable right to know the truth about past events and about the circumstances and reasons which led, through the consistent pattern of gross violations of human rights, to the perpetration of aberrant crimes. Full and effective exercise of the right to the truth is essential to avoid any recurrence of such acts in the future.'

Reference 73 - 0.01% Coverage

'Question of the impunity of perpetrators of human rights violations (civil and political), Final report prepared by Mr. Joinet pursuant to Sub-Commission decision 1996/119, UN Doc. E/CN.4/Sub.2/1997/20. Ibid.

Reference 74 - 0.01% Coverage

Article XXVI of the Lomé Peace Agreement of 7 July 1999 obliges the Commission to, 'among other things, recommend measures to be taken for the rehabilitation of victims of human rights violations'. While the Commission's enabling legislation did not explicitly mention the term 'reparations', the Commission has considered the matter within the context of the portion of its mandate instructing it to 'promote healing and reconciliation'.

Reference 75 - 0.01% Coverage

Produced by the TRC Steering Committee with support from the International Human Rights Law Group

Reference 76 - 0.01% Coverage

During the discussions on the Sierra Leone Human Rights Manifesto adopted by civil society in June 1999, the then UN High Commissioner for Human Rights, Mrs Mary Robinson, undertook to provide appropriate technical assistance for the establishment of the Commission. In a letter of 15 July, 1999 accepting the offer of assistance by the High Commissioner, President Kabbah pledged the unqualified support of his Government to the process of reconciliation.

Reference 77 - 0.01% Coverage

Since the Lomé Peace Agreement¹ granted a blanket amnesty, under Sierra Leonean law, for violations committed by the armed factions, civil society at various conferences within and outside Sierra Leone insisted that the enabling law of the truth commission should contain provisions for the grant of reparations for victims of the conflict and a mechanism to deal with their anguish. Following a conference in September 1999, civil society set up a Truth and Reconciliation Commission Working Group under the auspices of the National Forum for Human Rights. Prominent amongst the recommendations at the conference was that the Commission should consist of both national and international commissioners. It was believed that international commissioners, free of parochial interests, would bring a fresh perspective to the Commission.

Reference 78 - 0.01% Coverage

Pursuant to the commitment made at the declaration of the Human Rights Manifesto, the Office of the High Commissioner for Human Rights (OHCHR) developed a project to support the establishment of the Commission. This could not be immediately implemented due to the resumption of armed conflict in Sierra Leone in May 2000. Following a reassessment of the operational environment in September 2000, a revised project was developed in March 2001.

Reference 79 - 0.01% Coverage

The observance of the Ceasefire Agreement signed in Abuja, Nigeria in November 2000 and the commencement of disarmament in May 2001 among the armed factions increased the momentum for the establishment of the Commission. Furthermore, the Security Council in resolution 1346 adopted on 30 March 2001, encouraged the Government of Sierra Leone, together with the Secretary General of the United Nations, the High Commissioner for Human Rights and other relevant international actors, to expedite the establishment of the Commission.

Reference 80 - 0.01% Coverage

The Office of the High Commissioner for Human Rights provided a grant to the International Human Rights Law Group ("the Law Group") to start a campaign of public education and awareness about the Commission. The campaign used several media including radio, television, songs, drama and posters, among others, to create awareness and momentum for the establishment of the Commission. The Law Group partnered with Sierra Leonean civil society groups in implementing the campaign.⁴ OHCHR also

provided financial support to a number of Sierra Leonean civil society organisations to conduct sensitization programmes on the Commission. These included the National Forum for Human Rights and the National Commission for Democracy and Human Rights. Other NGOs including the Forum of Conscience sought and obtained independent funding with which they engaged in substantial public education programmes on the Commission.

Reference 81 - 0.01% Coverage

The final project sponsored by OHCHR, provided for a preliminary investigation into the human rights violation and abuses that occurred during the conflict. This was to enable the Commission to understand the trends and patterns in the conflict and in the violations and abuses that occurred. With this information, the Commission was expected to have a structured way of carrying out its statement taking exercise, as well as identify window cases for investigations and map the key issues on which to conduct research. A Sierra Leonean NGO, Campaign for Good Governance, executed the project, under the technical supervision of an OHCHR consultant.

Reference 82 - 0.01% Coverage

Sierra Leoneans from all over the world put forward nominations of suitable persons. The Selection Coordinator, with the assistance of an Advisory Board and after broad consultation with a cross section of Sierra Leonean society and with the High Commissioner for Human Rights, drew up a shortlist of finalists from 65 nominees. Each of the finalists was interviewed by a Selection Panel of six persons representing the President, the Armed Forces Revolutionary Council, the Inter Religious Council, the National Forum for Human Rights and the National Commission for Democracy and Human Rights as set out in the Lome Peace Agreement. The Selection Panel then ranked and provided comments on each of the finalists to the Selection Coordinator who recommended four of them for appointment to the Commission by the President.

Reference 83 - 0.01% Coverage

Suggestions for the international members of the Commission were submitted directly to the United Nations High Commissioner for Human Rights, or to the Selection Coordinator, who forwarded them to the High Commissioner. The High Commissioner for Human Rights recommended three persons as international commissioners for appointment to the Commission. Their names were first submitted to the Selection Panel for comments and finally submitted to the President for appointment. The selection process was concluded in March 2002.

Reference 84 - 0.01% Coverage

Some members of civil society organisations in Sierra Leone. Front row left, Joe Pemagbi Jr of the International Human Rights Law Group; Rev. Bob Kande of the Special Court Working Group (middle) and Mr. John Caulker of the Truth and Reconciliation Working Group.

Reference 85 - 0.01% Coverage

47. With the departure of the international staff and the termination of the contract of the Interim Executive Secretary, the Commission had no remaining staff. An emergency measure was quickly agreed to between the Commission, OHCHR, UNDP and the Human Rights Section of UNAMSIL. This was to

establish a Caretaker Committee, which was to provide secretarial services to the Commission pending the recruitment of permanent staff. Recruitment of staff commenced during the operational phase of the Commission's work and is dealt with elsewhere in this report.

Reference 86 - 0.01% Coverage

a. Legal and Reconciliation: Responsible for providing the Commission with legal opinion and advice on its operations as well as on issues of international human rights law. Responsible for the reconciliation mandate by developing strategies for reconciliation and healing while taking into consideration existing traditional methods of conflict resolution and reconciliation. It would also be responsible for the design and implementation of strategies for the protection of witnesses and victims where necessary.

Reference 87 - 0.01% Coverage

Between September and November 2002, the Commission did not have any staff members. In consultation with the Government, the Commission, UNDP and UNAMSIL, the OHCHR established a Caretaker Committee to manage the Secretariat of the Commission pending the recruitment of substantive personnel. The mandate of the Committee was to support the commencement of statementtaking and supervise the recruitment of personnel for the Commission. The Caretaker Committee was composed of the chairman of the Commission, one Commissioner, and representatives of the Human Rights Section of UNAMSIL and of UNDP.

Reference 88 - 0.01% Coverage

Values: The values, which were set out as underpinning the work of the Interim Secretariat, included the following: a. Training for all staff b. To be gender and child sensitive c. Encourage life long learning d. To be ambassadors of reconciliation e. Show respect and dignity to and be aware of the 'victims' f. Respect for each other and demonstrate team spirit g. Human Rights knowledge and the basis for such rights h. To be hands-on and pro-active managers i. Be rooted and integrated in the community j. Transparency, honesty and accountability

Reference 89 - 0.01% Coverage

Produced by the TRC Steering Committee with support from the International Human Rights Law Group

Reference 90 - 0.01% Coverage

Truth and reconciliation commissions have, in recent years, become wellrecognised as valuable and effective mechanisms in societies emerging from conflict. They help to ensure accountability for human rights violations, they clarify the historical record and put myths and lies about the past to rest, and they assist in giving a vision for the future. They are not a cure-all, but they can make a positive contribution when their work and activities are married with the dynamism of a civil society anxious for social transformation. This chapter addresses the principal concepts that underpinned and guided the work of the Sierra Leone Truth and Reconciliation Commission, and which are not specifically dealt with elsewhere in the Report. Concepts dealt with in the chapter include truth and truth telling, just war and just means, victims and perpetrators.

Reference 91 - 0.01% Coverage

The underlying principles of the Commission were set out in the 'Memorandum of Objects and Reasons', which was attached to the Truth and Reconciliation Act 2000, the legal instrument responsible for the creation of the Commission. The Memorandum explains that the Commission was 'proposed by Article XXVI of the Lomé Peace Agreement as part of the process of healing the wounds of the armed conflict which began in 1991'. Furthermore, '[s]ection 1 of Article XXVI of the Peace Agreement envisaged the proceedings of the Commission as a catharsis for constructive interchange between the victims and perpetrators of human rights violations and abuses and from this catharsis the Commission is to compile 'a clear picture of the past'. Accordingly, by clause 6, the principal function of the Commission is to create an impartial historical record of events in question as the basis for the task of preventing their recurrence.'

Reference 92 - 0.01% Coverage

What the 'Memorandum of Objects and Reasons' does not highlight is the fact that the Commission was created out of a tension between two contradictory intentions, on the one hand an impetus to forget the past and to forgive past violations of human rights, and another calling for the truth of the past to be determined and acknowledged. The controversial premise upon which the Lomé Peace Agreement was predicated is the pardon and amnesty set out in Article IX. The justification appears in the provision itself: 'In order to bring lasting peace to Sierra Leone...' and 'To consolidate the peace and promote the cause of national reconciliation'.

Reference 93 - 0.01% Coverage

International law has acknowledged the validity of granting amnesty to combatants when a conflict comes to an end. In the case of Sierra Leone, as the Commission was told on more than one occasion by participants in the Lomé negotiations, amnesty presented itself as an essential condition if fighting was to stop and peace allowed to break out. The Commission has determined that serious violations of human rights and international humanitarian law took place on all sides in the conflict, so there can be no doubt that all of the participants in the Lomé negotiations in fact benefited from the amnesty. It cannot, in other words, be reduced to a one-sided concession.

Reference 94 - 0.01% Coverage

However, in recent decades, the dangers of granting full amnesty for human rights violations have been increasingly appreciated. Amnesty overrides the interests of individual victims, who are also entitled to see their personal concerns addressed and balanced against those of society as a whole. International law refuses to accept the validity of amnesty for the most serious crimes of international concern, namely genocide, crimes against humanity and war crimes. These categories correspond in an approximate sense with the concept of gross and systematic violations of human rights. Even the practical justification for amnesty is called into question: it may not deliver the long-term peace that it promises. If the amnesty is granted in a way that ignores the past, it may sow the seeds for future conflict, and serve as a justification for future generations to settle scores that were left unresolved when the conflict came to an end.

Reference 95 - 0.01% Coverage

In one of the seminal documents of the United Nations on the issue of impunity for human rights violations, Special Rapporteur Louis Joinet has spoken of the inalienable right to truth: 'Every people has

the inalienable right to know the truth about past events and about the circumstances and reasons which led, through the consistent pattern of gross violations of human rights, to the perpetration of aberrant crimes. Full and effective exercise of the right to the truth is essential to avoid any recurrence of such acts in the future.' Further, he explains: 'This is not simply the right of any individual victim or his nearest and dearest to know what happened, a right to the truth. The right to know is also a collective right, drawing upon history to prevent violations from recurring in the future. Its corollary is a "duty to remember" on the part of the State: to be forearmed against the perversions of history that go under the names of revisionism or negationism, for the history of its oppression is part of a people's national heritage and as such must be preserved. These, then, are the main objectives of the right to know as a collective right.'³

Reference 96 - 0.01% Coverage

As Pedro Nikken, former president of the Inter-American Court of Human Rights, has written: 'There is no doubt that the discovery of the Truth, which is the responsibility of independent persons, destroys that element which, while not useful in itself for eradicating impunity, fulfils at least a dual function. First, it is useful for society to learn, objectively, what happened in its midst, which translates into a sort of collective catharsis. And second, it contributes to creating a collective conscience as to the need to impede the repetition of similar acts and shows those who are capable of doing so that even if they may escape the action of justice, they are not immune from being publicly recognized as the persons responsible for very grave attacks against other human rights. In this regard, even though [truth commissions] do not constitute

Reference 97 - 0.01% Coverage

Question of the impunity of perpetrators of human rights violations (civil and political), Final report prepared by Mr. Joinet pursuant to Sub-Commission decision 1996/119, UN Doc. E/CN.4/Sub.2/1997/20, para. 17.

Reference 98 - 0.01% Coverage

The 'inalienable right to truth' is closely related to the 'right to an effective remedy' for violations of human rights. The right to an effective remedy is firmly entrenched in all major international law instruments.⁶ 'Establishing the truth' has been recognised as an essential part of the right to an effective remedy, as it is a crucial aspect of the guarantee of non-repetition of the original violation or abuse. This link between 'knowing what has happened' and 'avoiding the recurrence of violations in the future' has been repeatedly confirmed.⁷ Very illustrative in this respect is the innovative case law of the Inter-American human rights institutions, borne in the long and painful history of conflict in South and Central America.

Reference 99 - 0.01% Coverage

In the case of *Ellacuria v. El Salvador*, the Inter-American Commission for Human Rights presented the right to know the truth as a direct remedy in itself, based on Article 1.1 of the Inter-American Convention providing that 'a State party is obligated to guarantee the full and free exercise of the rights recognized by the Convention'. In the opinion of the Inter-American Commission, ensuring rights for the future requires a society to learn from the abuses of the past. States must inform their citizens about the truth. This right to know the truth has two components: an individual right applying to the victim and family members and a general societal right. With respect to the public right, the Inter-American Commission

said: 'Every society has the inalienable right to know the truth about what has occurred, as well as the reasons and

Reference 100 - 0.01% Coverage

Examples are Article 8 of the Universal Declaration of Human Rights (1948) and Article 2 of the International Covenant of Civil and Political Rights (1966). All the major human rights instruments including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (article 2.3), the American Convention on Human Rights (article 29) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (article 13) all guarantee the right to an "effective" remedy or recourse after a violation has occurred.

Reference 101 - 0.01% Coverage

See for instance the "Proposed Basic Principles and Guidelines" attached to the Final Report submitted by Mr. Theo van Boven, Special Rapporteur, to the UN Commission on Human Rights, Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, dated 2 July 1993 (E/CN.4/Sub.2/1993/8) and more recently the "Basic Principles and Guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law", annex to the Final Report of the Special Rapporteur, Mr. Cherif Bassiouni, to the UN Commission on Human Rights, The right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, dated 18 January 2000 (E/CN.4/2000/62). Also very relevant in this respect is the Revised final report prepared by Mr. Joinet on the Question of the impunity of perpetrators of human rights violations (civil and political), presented to the UN Commission on Human Rights on 2 October 1997 (E/CN.4/Sub.2/1997/20/Rev.1). Both the UN Human Rights Committee and the European Court of Human Rights also recognize a positive duty of States to investigate human rights violations.

Reference 102 - 0.02% Coverage

These principles were developed further by the Inter-American Commission on Human Rights in the case of *Romero v. El Salvador*⁹. The Commission referred again to the dual character of the right: 'The right to the truth is a collective right that enables society to have access to information essential to the development of democracies. At the same time, it is a private right of the next-of-kin of victims that makes possible one form of reparation, especially where amnesty laws are applied.' Elaborating on society's right to be duly informed, the Commission stated that it had held before that: Independently of the problem of proving guilt, which in every case must be determined individually and with due process guarantees, by a pre existing court which applies the law in force at the time the crime was committed, one of the first matters that the Commission feels obliged to give its opinion on in this regard is the need to investigate the human rights violations committed prior to the establishment of the democratic government.... Every society has the inalienable right to know the truth about past events, as well as the motives and circumstances in which aberrant crimes came to be committed, in order to prevent repetition of such acts in the future. Moreover, the family members of the victims are entitled to information as to what happened to their relatives.... Such access to the truth presupposes freedom of speech....¹⁰

The Inter-American Commission concluded that the 'right that all persons and society have to know the full, complete, and public truth as to the events transpired, their specific circumstances, and who participated in them is part of the right to reparation for human rights violations, with respect to

satisfaction and guarantees of non-repetition. The right of a society to have full knowledge of its past is not only a mode of reparation and clarification of what has happened, but is also aimed at preventing future violations.’¹¹

Reference 103 - 0.01% Coverage

An important aspect of the right to an effective remedy is the duty that international human rights law imposes upon States to investigate human rights violations and abuses. For example, the European Court of Human Rights has held that the right to an effective remedy (article 13 of the European Convention on Human Rights) guarantees both the availability of an effective domestic remedy to be exercised at the initiative of complainants and, in the event of very serious allegations, the carrying out of a full investigation by public authorities.¹² In *McCann v. United Kingdom*,¹³ the Court said that ‘[t]he obligation to protect the right to life under [article 2], read in conjunction with the State’s general duty under [a]rticle 1 of the Convention to “secure to everyone within their jurisdiction the rights and freedoms defined in [the] Convention”, requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force by, inter alia, agents of the State’.¹⁴ In *Tanrikulu v. Turkey*, despite insufficient evidence to implicate the Turkish government in a victim’s death, the European

Reference 104 - 0.01% Coverage

The same interpretation, by which the fundamental right to a remedy includes an entitlement to know the truth, through investigation, appears in the case law of the Inter-American Court of Human Rights. In *Velásquez Rodríguez v. Honduras*, the Inter-American Court held that the State is required to investigate every context involving a violation of the rights enshrined in the American Convention on Human Rights, even if the perpetrator is a private person. The ‘effective search for the truth’ must be assumed by the State itself and is not dependent on victims’ initiatives. The Court also demanded an effective investigation despite the existence of difficult conditions within the country.¹⁶ Even where there are amnesty laws, the Inter-American Court has declared that the State is still obliged to use the means at its disposal to inform the relatives of the fate of the victims, and the location of their remains, if they have been killed.¹⁷

Reference 105 - 0.01% Coverage

The United Nations Human Rights Commission has spoken of this right to an investigation to establish the truth in cases of forced disappearance. According to the Committee, ‘state parties should also take specific and effective measures to prevent the disappearance of individuals and establish effective facilities and procedures to investigate thoroughly, by an appropriate and impartial body, cases of missing and disappeared persons in circumstances which may involve a violation of the right to life’.¹⁸ It has also said that complaints of torture and inhuman treatment ‘must be investigated promptly and impartially by competent authorities so as to make the remedy effective’.¹⁹

Reference 106 - 0.01% Coverage

Factual or forensic truth. One of South Africa’s great human rights jurists, Albie Sachs, has called this ‘microscopic truth’. It is akin to a version of events that is accepted after all the facts have been examined and can be supported by evidence. It involves bringing the facts to light. In this respect, the Commission was mandated by legislation to provide an impartial record into the violations and abuses of human rights

and humanitarian law that were committed during the conflict. It was provided with robust powers of investigation, including the authority to summon witnesses and compel testimony, and to conduct searches and to take custody of documents and other material evidence.

Reference 107 - 0.01% Coverage

Though not a court in the traditional strict sense, these powers of the Commission are akin to those available to traditional methods of justice, including criminal justice. The Commission used them, although sparingly, because as a general rule Sierra Leoneans were committed to the truthseeking process and as a result they cooperated fully. But on occasion it was as a result of the threat to use these powers that witnesses appeared before the Commission, that official documents were provided, and that access was gained to premises normally closed to the public and to human rights investigators from NGOs and the United Nations.

Reference 108 - 0.01% Coverage

Political constraints: The Dilemma of New Democracies Confronting Past Human Rights Violations” 1992, 43 Hastings L.J. 1425, 1433.

Reference 109 - 0.01% Coverage

In the course of its work, the Commission frequently encountered those who consider that the justification for the conflict – on all sides - needed to be taken into account in assessing the existence and seriousness of alleged violations of human rights and international humanitarian law principles. For example, the Commission has often been told that the violations and abuses of human rights and humanitarian law for which the Civil Defense Forces (CDF) bears responsibility are in some sense less important than the violations attributable to the Revolutionary United Front (RUF), because the CDF was endeavouring to resist the rebels, a cause perceived by most to be just.

Reference 110 - 0.01% Coverage

This argument is tantamount to saying that because a cause might have been just, the means used to pursue it are irrelevant. In other words, the ends justify the means. But this reasoning is not compatible with the normative framework of the Commission, which is to examine violations and abuses of human rights and international humanitarian law. Violations and abuses of human rights and international humanitarian law can be neither justified nor excused on the grounds that they are in some way responding to violations and abuses by the other side in a conflict.

Reference 111 - 0.01% Coverage

At the outset, it seems important to state that the Commission is not called upon to assess the justness of the conflict itself. It may be argued by some that those who initiated the attempts to overthrow the Momoh regime were justified in taking up arms. The preamble of the Universal Declaration of Human Rights states: ‘Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the Rule of Law.’ Accordingly, human rights law seems to acknowledge that in extreme conditions, there is a ‘right of rebellion’. It does not encourage rebellion, nor does it sanction coups d’état. Human rights law assumes that rights will be pursued using legal means and in a rule of law framework. The Universal Declaration of

Human Rights declares that the will of the people shall be the basis of the authority of government, and that it shall be expressed in periodic and genuine elections. Governmental change, in principle, is to be effected at the ballot box. Sometimes, however, after long years of dictatorship, this aspiration may seem unlikely or even impossible. The Commission need not determine whether the conditions mentioned in the preamble of the Universal Declaration of Human Rights for the right of rebellion were indeed fulfilled. But, as this Report explains elsewhere, there is little doubt that the words 'tyranny' and 'oppression', and the failure to protect human rights by the Rule of Law, were appropriate descriptions of Sierra Leone in March 1991.

Reference 112 - 0.01% Coverage

On the other hand, international human rights law also acknowledges the right of States to restrict and even suspend certain fundamental rights under certain circumstances. The International Covenant on Civil and Political Rights, in article 4, allows such suspension '[i]n time of public emergency which threatens the life of the nation...' Few would quarrel with the applicability of this provision to the situation in Sierra Leone during the decade-long war. Nevertheless, certain fundamental rights and freedoms cannot be suspended even in time of war. These core rights, which are sacrosanct, include the right to life, the prohibition of torture and other cruel, inhuman or degrading treatment, and the right to protection against discrimination. Many acts committed by the

Reference 113 - 0.01% Coverage

If human rights law seems to leave a small amount of room for taking into account the justice of the cause being defended by the alleged perpetrator, international humanitarian law is essentially indifferent to the question altogether. International humanitarian law looks at the participants in an armed conflict without regard to whether or not the cause is legitimate. Its only concern is with the legality of the means and methods of warfare, and with the protection of vulnerable groups, especially civilians. Whether we are speaking of rebels or pro-Government forces, neither side can invoke the alleged justice of its cause as a defence to inhuman acts perpetrated by its combatants and collaborators.

Reference 114 - 0.01% Coverage

The Commission need not examine the justness of the rebellion to overthrow the government in 1991, in order to fulfil its mandate, which is to address violations and abuses of human rights and international humanitarian law. Nor does it consider that those who fought to defend a democratically elected regime, from 1996 onwards were justified in using any means necessary to ensure that those chosen by the people actually governed the country.

Reference 115 - 0.01% Coverage

A person is a 'victim' where as a result of acts or omissions that constitute a violation of international human rights and humanitarian law norms, that person, individually or collectively, suffered harm, including physical or mental injury, emotional suffering, economic loss, or impairment of that person's fundamental legal rights. A 'victim' may also be a dependant or a member of the immediate family or household of the direct victim as well as a person who, in intervening to assist a victim or prevent the occurrence of further violations, has suffered physical, mental or economic harm.²³

Reference 116 - 0.01% Coverage

The right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, Final report of the Special Rapporteur, Mr. M. Cherif Bassiouni, submitted in accordance with Commission resolution 1999/33, UN Doc. E/CN.4/2000/62, para. 8.

Reference 117 - 0.01% Coverage

The term 'perpetrator' is widely used in international human rights law to describe individuals who are responsible for violations of human rights and international humanitarian law.

Reference 118 - 0.01% Coverage

Commission on the Protection and Promotion of Human Rights, in mandating Louis Joinet to examine the question of impunity, spoke of the 'Question of the impunity of perpetrators of human rights violations'.²⁴ A distinction is made here with the State itself, which is also responsible for human rights violations under international law.

Reference 119 - 0.01% Coverage

Historically, human rights law addressed itself essentially to violations committed by the State. The rights of the individual were viewed in this context. The development of the concept of 'perpetrators' indicates a desire to focus on individuals who bear personal responsibility for human rights violations and abuses.

Reference 120 - 0.01% Coverage

Produced by the TRC Steering Committee with support from the International Human Rights Law Group

Reference 121 - 0.01% Coverage

The Project Document on the Commission, prepared by the Office of the High Commissioner for Human Rights, Geneva, envisaged an operational period of three major phases, namely: deployment, investigation and reporting, each lasting for four months. The staff requirements of the Commission were to be calibrated with the specific requirements of each operational period. The Commission was to retain a core staff of 28 while another 70 were to be recruited on short-term basis, not exceeding 6 months, depending on need.

Reference 122 - 0.01% Coverage

During the investigation stage, the project document envisaged the conduct of in-depth investigations, analysis and systematisation of the information with a view to verifying their authenticity. This would include detailed investigations of testimonies and cross checking information on human rights abuse and violations. Once the district teams had received voluntary statements, reviewed testimonies, investigations would be carried out to authenticate the violations and abuses. The Commission was also to identify and investigate the "window" or representative cases that would form the bedrock of the report. Other activities envisaged during this phase would include public hearings, reconciliation procedures and identification of the main elements of the final report.

Reference 123 - 0.01% Coverage

As provided for in the project proposal, the Commission relied largely on NGOs which were members of the Human Rights Committee established by UNAMSIL. It also relied on the UNAMSIL Human Rights Officers in the districts to make recommendations of potential candidates. The Commission recruited most of the statement takers who had worked for the Campaign for Good Governance in the "Mapping Project"² and some of those who participated in the research project on the conflict.³ Because of the limited time for training, the Commission conducted follow up training programmes to deal with lapses in performance.

Reference 124 - 0.01% Coverage

The preliminary investigation into the human rights abuses and violations that occurred in the conflict commissioned by OHCHR

Reference 125 - 0.01% Coverage

The concluding activities of the Commission included work on archiving its materials, conducting an audit of its financial management and the printing and dissemination of the report. The Commission had hired the services of a team of consultants from the University of Sierra Leone to archive the materials it had acquired. OHCHR had pledged to support the process by recruiting a consultant to assist in digitising the materials. While the materials have been archived, and are presently housed at the University of Sierra Leone on an interim basis pending the establishment of the Human Rights Commission, the final custodian of all the materials, the digitising is yet to take place. Digitising will help to protect the materials and prevent wear and tear. The Commission hopes that the materials will be digitised within the shortest possible time.

Reference 126 - 0.01% Coverage

Open Society Institute for West Africa (OSIWA) towards establishing a website for the Commission. OSIWA would recruit a consultant who would maintain the site pending final handover of the site to the Human Rights Commission.

Reference 127 - 0.01% Coverage

The Commission was further remiss in not concluding arrangements for the dissemination for its report. Civil society partners of the Commission had been engaged in long term planning on disseminating the report. In partnership with the Human Rights Section of UNAMSIL a number of preliminary meetings had taken place to outline a dissemination strategy and plan. UNICEF also wished to use the report as an advocacy tool for its programmes and had engaged in meetings with staff of the Commission on the plans for the dissemination of the report. The Commission however failed to accept or support the offers of dissemination made by such groups and as a result no arrangements for dissemination were in place at the time of the report's publication.

Reference 128 - 0.01% Coverage

The preliminary budget on the Commission was \$9,998,091 million. It was produced in February 2002 by OHCHR with input from the Budget and Human Rights sections of UNAMSIL. The budget was a provisional one that was to be considered and modified where necessary by the Commissioners.

Reference 129 - 0.01% Coverage

An appeal was launched by the High Commissioner for Human Rights on the 21st February 2002. The possible six month extension of the Commission was not considered in the preparation of the budgetary estimates. In its resolution 1370 (2001) of 18 September 2001 and 1400 (2002) of 28 March 2002, the Security Council had urged donors to commit funds to the Commission. The Commission on Human Rights had also requested assistance to the truth and reconciliation process in Sierra Leone in its resolution 2002/20 adopted at its 58th session. These calls were reiterated by a Presidential Statement issued by the Security Council after its informal consultations on Sierra Leone on 22 May 2002 in which the Council urged donors to contribute generously and provide urgently needed funds to the Commission.

Reference 130 - 0.01% Coverage

Produced by the TRC Steering Committee with support from the International Human Rights Law Group

Reference 131 - 0.01% Coverage

In Sierra Leone, violations and abuses were committed on a wide scale and by all the factions in the conflict. It was not possible for the Commission to investigate all the violations and abuses that were committed during the civil war. Consequently the statement taking exercise aimed at representing the general spread of human rights violation and abuses. This enabled the Commission to obtain a sample of violations and abuses that occurred, such that "many people could relate to the narratives and the experiences told by those who testified before the Commission".⁵

Reference 132 - 0.01% Coverage

See Lax, Ilan; "Strategies and Methodologies for Finding the Truth", A compilation of Articles on the Sierra Leone Truth and Reconciliation Commission; Human Rights Section, UNAMSIL, Freetown; December 2001; at page 75.

Reference 133 - 0.01% Coverage

The Office of the High Commissioner for Human Rights, (OHCHR) in Geneva, had commissioned a preliminary study on traditional methods of reconciliation and conflict resolution in Sierra Leone by a local NGO, Manifesto 99. The report of that study indicated the tremendous roles chiefs, elders and religious institutions could play in facilitating and promoting reconciliation in the communities. The challenge before the Commission was how to mobilise these institutions and bring them together under one umbrella to strengthen the potential for reconciliation in the communities. The Truth and Reconciliation Act also enjoined the Commission to seek assistance from chiefs and religious leaders in promoting reconciliation.

Reference 134 - 0.01% Coverage

The UN Office of the High Commissioner for Human Rights (OHCHR), Geneva, commissioned a preliminary investigation into the violations and abuses perpetrated in the conflict, to provide background information to the Commission as it determined its research and investigation priorities. The project was

contracted by OHCHR to a consultant working with the Campaign for Good Governance (CGG), a Sierra Leonean NGO. The project consisted of a statement-taking exercise in which 1,316 statements were collected throughout the country. In addition, several interviews were conducted with selected individuals who provided in-depth insights into the conflict and reasons behind the violations committed. The report into this 'Mapping Project' was a comprehensive preliminary assessment of the nature and extent of the violations committed.⁹ The report was used by the Commission to determine the categories of violations to be used in its database and to attain an overview of the key events of the conflict. 'Window cases' for investigation were partly derived from the information provided by the CGG report.¹⁰

Reference 135 - 0.01% Coverage

The Commission used both primary and secondary sources to write its Report. Primary sources are the statements, testimonies given at hearings, unpublished material received from different sources in particular, the Office of the Attorney General and Minister of Justice and the Criminal Investigation Department of the Sierra Leone Police Services, submissions and interviews conducted by researchers and investigators. All of these materials have enabled the Commission conduct a comprehensive documentation of human rights violations in the country. Secondary sources used are reports from international and national organisations, books, articles from journals and other publications. Primacy was given to original sources in order to capture and integrate the experiences of the people of Sierra Leone.

Reference 136 - 0.01% Coverage

'window cases'. The Commission decided to identify patterns and peculiarities in the conflict that enabled the roles played by all relevant actors to be highlighted. The window cases had to be representative of the different experiences, group affiliations and human rights violations that the Commission would report on. The investigations were designed to complement the research activities of the Commission by providing specific information on the important events and junctures in the conflict.

Reference 137 - 0.01% Coverage

☒ The nature of human rights abuses and violations experienced in different Regions and Districts;

Reference 138 - 0.01% Coverage

large-scale human rights abuses including summary executions, had to be investigated to offer deeper understanding of the CDF and its operations.

Reference 139 - 0.01% Coverage

It was alleged by the NPRC regime that a coup had been attempted against the government on 28 December 1992. On the basis of this allegation, 29 persons were arrested and executed. A large segment of the Sierra Leonean public had always doubted the veracity of the NPRC's allegation that a coup was attempted. There were also persistent claims that those executed were not given a fair trial. This became an important window case for investigating the human rights situation under the NPRC government.

Reference 140 - 0.01% Coverage

The project document produced by the Office of the High Commissioner for Human Rights, Geneva envisaged the creation of six departments including research. The Commission decided that research could not be separated from investigations. Research and investigations are not ends in themselves. Rather, they are means for producing the final Report of the Commission. They feed and reinforce each other. The Commission decided to create an operational unit that would collate all information available to the Commission, be responsible for analysing them, and integrating them into the final Report. An Information Management Unit was created to supervise the research, investigations and data management units of the Commission. This would be the channel for processing information received by the Commission and passing them on to the Commissioners. This unit would also be responsible for producing the final Report of the Commission.

Reference 141 - 0.01% Coverage

a. The need for accountability, especially considering the amnesty clause under the Lomé Peace Agreement. Truth commissions usually address impunity as part of their mandates. This becomes paramount when, as in the case of Sierra Leone, there was a general amnesty provision that prevented perpetrators from being prosecuted. The naming of names was seen as a way of attributing responsibility for human rights abuses and violations committed.

Reference 142 - 0.01% Coverage

c. Accuracy of the historical record. Attributing responsibilities for human rights violations and abuses committed enhances the accuracy of the understanding of the conflict. In the case of Sierra Leone, the role of many perpetrators is poorly known and myths have been created around them.

Reference 143 - 0.01% Coverage

At a technical meeting on "Children and the Truth and Reconciliation Commission for Sierra Leone" convened in June 2001 by UNICEF, the National Forum for Human Rights and UNAMSIL Human Rights Section, it was resolved that the Commission should publish a simplified version of the Commission's Report for children. During the Commission's thematic hearings on children, the Children's Forum Network (CFN) called on the Commission to produce "a child-friendly version of the Truth and Reconciliation Commission Report, which could be used by teachers and children's organisations, such as the Children's Forum Network, to disseminate the findings and recommendations of the Commission to the children of Sierra Leone."¹³ The Truth and Reconciliation Commission Act 2000 further required the Commission to pay special attention to the needs and experiences of children during the armed conflict. The Commission was accordingly mindful of the need to involve children in all aspects of its work.

Reference 144 - 0.01% Coverage

In August 1999, a coalition of human rights NGOs, professional groups and development organisations was created under the direction of the National Forum for Human Rights (NFHR). The coalition was named the Truth and Reconciliation Commission Working Group,¹⁴ with Forum of Conscience as the focal point. The purpose of the Working Group was to involve Sierra Leonean civil society in the TRC process and to ensure that civil society's concerns would be addressed in the design of the TRC Act and in the ways in which the Commission was going to undertake its task.

Reference 145 - 0.01% Coverage

The events of May 2000 put a hold on the establishment of the TRC. In November 2000 and June 2001, NFHR and UNAMSIL Human Rights Section organised two conferences on the Truth and Reconciliation Commission to put the Commission back on the agenda of civil society.

The TRC Working Group received funding from the Office of the High Commissioner for Human Rights in Geneva to conduct sensitisation and public education campaigns on the TRC. Its central purpose was to prepare the ground for the establishment of the Commission. Despite some problems between the Working Group and OHCHR due to perceived poor management on the part of the Working Group, the following activities were undertaken:

Reference 146 - 0.01% Coverage

NFHR subsequently received separate funding from UNAMSIL to conduct training for chiefs and NGOs in the provincial areas. The National Commission for Democracy and Human Rights (NCDHR) received funding from the OHCHR to produce a booklet on the TRC and to translate it into several local languages.

Reference 147 - 0.01% Coverage

OHCHR provided funding to the International Human Rights Law Group to conduct an assessment of the requirements of an effective sensitisation and public information campaign on the TRC process. Following consultations by the International Human Rights Law Group ("the Law Group") and Sierra Leonean civil society, a Steering Committee was created that included representatives of the TRC Working Group, the Inter-Religious Council, the Law Group itself, NFHR, NCDHR and the Human Rights Section of UNAMSIL, to serve as the implementing mechanism for the Law Group project.

Reference 148 - 0.01% Coverage

The outcome of the Law Group consultation was a consensus on the way forward. It was decided to build a framework for the TRC sensitisation campaign. A four-day workshop was organised from 7 to 10 August 2001 and was attended by 15 human rights activists representing key organisations involved in promoting the TRC process. Participants developed a unified approach to sensitisation on the TRC, emphasising consistent messages and a framework for community meetings. Activities were planned in four areas: radio and television; print media; community sensitisation; and sensitisation of critical stakeholders. Focal points were designated for each area and a coalition was created for the sensitisation campaign that included the National Forum for Human Rights, the Inter-Religious Council, the National Commission for Democracy and Human Rights and UNAMSIL.

Reference 149 - 0.01% Coverage

A workshop was organised by UNIFEM and the Commission with the participation of civil society organisations and women from the provinces to garner input from them on the recommendations that the Commission should make on women. A conference on reparations was organised by the TRC Working Group to make suggestions for recommendations to the Commission. The International Centre for Transitional Justice and the International Human Rights Law Group also facilitated a series of civil society consultations on the possible recommendations that the Commission should make. The outcome document was formally presented by civil society to the Commission at a public briefing organised by the Commission in December 2003.

Reference 150 - 0.01% Coverage

Several consultations were held with civil society organisation on the design of the form, to ensure that it was user friendly and contained all the relevant questions to which the Commission needed to collect answers. Groups consulted included Pride, Campaign for Good Governance, Manifesto 99, the National Forum for Human Rights, Caritas Makeni, several women's groups and UNIFEM.

Reference 151 - 0.01% Coverage

Statement givers were entitled to fill more than one section of the form if they considered themselves to belong to more than one category. Indeed, many people in Sierra Leone were victims, perpetrators and witnesses at the same time. An example is the case of a child soldier. If the child was forcibly enlisted, he was a victim. On the other hand, after his forced recruitment, he was likely to have committed human rights violations during his time as a combatant, thus qualifying him as a perpetrator. Furthermore, the child soldier was likely to have been a witness to atrocities committed by others.

Reference 152 - 0.01% Coverage

The training was divided into three modules. The first module addressed the mandate and functions of the Commission. The second module provided an understanding of human rights issues, interviewing techniques, confidentiality and corroboration issues, and how to use the Commission's statement form. The third module was composed of special interview techniques for specific groups: women and girls, victim of sexual violence, children and excombatants. Specific instruction was given on how to deal with post-traumatic stress experience by interviewees. All the modules included exercises and interactive role-playing. Statement takers were instructed to use the one on one interview technique. Statement takers were provided with a Manual for guidance and reference (see appendix section).

Reference 153 - 0.01% Coverage

The TRC made use of the Human Rights Information Management System (HRIMS). This system is designed to perform the following functions:

Reference 154 - 0.01% Coverage

By using a vocabulary, the facts within the narrative were reduced to a distinct and countable set of values. This allowed the free text narrative to be represented in the database and enabled the quantifying and statistical study of the data. The vocabularies and database are structured such that their use did not misrepresent or discard information in the narrative. Without the use of vocabularies, patterns within the data based on variables such as location, gender and ethnicity would not have been identified. Ultimately it was possible to illustrate the magnitude, trends and patterns of human rights violations.

Reference 155 - 0.01% Coverage

The American Association for the Advancement of Science - Science and Human Rights Program (AAAS/SHR) provided funding and a field consultant to conduct this testing. The International Center for Transitional Justice (ICTJ) provided additional funding for this purpose.

Reference 156 - 0.01% Coverage

Human rights data is initially generated as a 'free text' narrative. Within the narrative there may be mention of various violations, the places they occurred, when they happened and who was involved as a perpetrator or victim. Additional background facts about the various role players may be included such as their ethnicity, religion and occupation.

Reference 157 - 0.01% Coverage

The model adopted by the TRC was based on that proposed by Dr. Patrick Ball in his book entitled 'Who did What to Whom?'.²⁴ It is a model proven to produce accurate statistical results. It has been used extensively by other truth commissions and human rights documentation projects, including the truth commissions in Haiti, Guatemala, South Africa and, most recently, in Peru. The model used by the TRC allows for the following complex situations:

Reference 158 - 0.01% Coverage

See Ball, Patrick; "Who Did What to Whom? – Planning and Implementing a Large-Scale Human Rights Data Project" (1996); published by AAAS: Washington, DC, USA.

Reference 159 - 0.01% Coverage

Data Entry and Cleaning was the third stage of the data processing pipeline. In this step the coded forms were entered into the database system, where human rights violations data could be safely stored. Once a significant amount of information had been entered into the database, preliminary analysis began.

Reference 160 - 0.01% Coverage

- One primary machine, the database server, stored the database of human rights violations. The database server, statements and coding forms were all held inside a reinforced 'strong room'.

Reference 161 - 0.01% Coverage

The Human Rights Data Analysis Group (HRDAG) within the American Association for the Advancement of Science and Human Rights Programs (AAAS/HRP) provided the database and client software. The chosen system, 'Analyzer', is open source software specifically designed for the storage and processing of human rights violations data.²⁵ HRDAG was able to apply modifications to the software specifically to meet the requirements of the TRC.

Reference 162 - 0.01% Coverage

181. A team from the Human Rights Data Analysis Group (HRDAG) of the Benetech Initiative (Palo Alto, California, USA) conducted the judgement process with the support of the American Bar Association, Central and East European Law Initiative (ABA/CEELI). The matching exercise took three weeks to complete.

Reference 163 - 0.01% Coverage

- Governance in Sierra Leone, including the extent of participation in political processes and respect for human rights

Reference 164 - 0.02% Coverage

The Commission is an independent organisation whose mandate is to create an impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone, from the beginning of the conflict in 1991 to the signing of the Lomé Peace Agreement on 7 July 1999. The Commission has the mandate to address impunity and to respond to the needs of the victims of the conflict in Sierra Leone. The Commission has also been established to prevent a repetition of the conflict.

The general function of the Commission is to investigate and report on the causes, nature and extent of the human rights violations and abuses, and on the context in which these violations and abuses occurred. It also has to report on whether or not the human rights violations and abuses were the result of deliberate planning, policy or authorisation by any government, group or individual. The Commission will investigate and report on the role played by both internal and external factors in the conflict. In this respect, it will investigate the role that foreign individuals, groups or governments might have played in the conflict in Sierra Leone.

During its statement-taking phase, the Commission has to provide an opportunity to victims to give an account of the human rights violations and abuses they have suffered in order to assist them restore their dignity and to promote reconciliation. It also has to provide an opportunity to perpetrators to relate their experiences and to create a forum within which victims and perpetrators can speak to each other. Statement-takers will therefore collect statements from both victims and perpetrators in the conflict. The Commission will give special attention to the needs of child victims, to those who have suffered sexual abuses and to children who were perpetrators in the conflict.

Reference 165 - 0.01% Coverage

3. Understanding of human rights violations and abuses

Human rights law applies in times of conflict as well as in times of peace. "Human rights" is a term used to describe a broad spectrum of rights that may belong to individuals, groups (such as ethnic and religious minorities) and "peoples". Human rights are sometimes classified into civil, political, economic, social and cultural rights. They range from rights which contemplate the core values of human dignity, like the right to life and the prohibition of torture, to the right to housing and medical care.

The Commission is interested in all of these categories. Although wartime atrocities usually involve the "core" human rights, like the right to life and the protection against cruel and inhuman treatment, the conflict in Sierra Leone may also have involved, and have been caused by, violations of such economic and social rights as the right to food, to housing and to medical care. The Commission takes a broad approach to the term human rights.

A list of human rights is provided in annex 1. This list should be regarded as a sample of human rights and therefore, it is not exhaustive. Statement-takers should be careful in excluding any type of right that is not included in the list. The Commission wishes not to exclude anyone who thinks he/she has suffered a human rights abuse or violation.

Reference 166 - 0.01% Coverage

Victims: This category regroups statement-givers who have suffered a human rights violation or abuse or a violation of international humanitarian law during the conflict. Those statement-givers will tell the statement-takers about what they suffered.

Perpetrators: This category is for statement givers who have themselves committed human rights violations or abuses or violations of international humanitarian law during the conflict. Those statement-givers will tell the statement-takers about what they inflicted to other people.

Witnesses: The Commission also provides for people who have seen human rights violations or abuses or violations of international humanitarian law committed during the conflict. These are the people who have witnessed an incident and want to tell the Commission about it. Person making a statement on behalf of someone else: This category includes the statement- givers who want to tell the story of a victim family member, relative or friend who is not able to speak to the Commission himself, either because of emotional, mental or physical problems (including death).

Reference 167 - 0.01% Coverage

Indeed, many people in Sierra Leone are victims, perpetrators and witnesses at the same time. As an example, let's consider the case of a child soldier. If the child was recruited involuntarily, he can be considered as a victim. On the other hand, after his forced enrolment, he is likely to have committed himself human rights violations or abuses or violations of international humanitarian law during his time as a combatant. That makes him a perpetrator as well. Furthermore, this same child soldier is likely to have been a witness to atrocities committed by others; he is therefore also a witness. The statementtakers will then have to fill in three of the statement form sections, one for each role that the statement-giver has played in the conflict.

Reference 168 - 0.01% Coverage

The right to avoid self-incrimination means that a person's testimony at the Commission cannot be used against that person in any court of law, including the Special Court. During the statement-taking phase, perpetrators giving a statement will have to provide the Commission with details related to the human rights violations and/or abuses they committed. These details will not, under any circumstance, be used to prosecute them. The right to avoid selfincrimination is part of the law and is granted automatically to all statement givers (they do not have to request it).

Reference 169 - 0.01% Coverage

Statement-takers should always keep in mind that giving a statement may be a difficult and even painful experience for the person giving the statement. Indeed, it will force the statement-giver to relive his/her experience: the human rights violations suffered, witnessed or committed. Feelings of fear, sadness or guilt may resurface during the statement-giving. It is therefore crucial that the statement-taker be attentive and compassionate. The statement-giver must feel that his/her experience is of interest to the statement taker. The statementgiver must be allowed to take breaks when tired or when overwhelmed by emotions.

Reference 170 - 0.01% Coverage

At this point, the statement-taker will ask the statement giver what kind of statement he/she wishes to give to the Commission. That is to say, does the statement-giver wish to tell the Commission about human rights violations and abuses he/she suffered, witnessed, committed or that a relative suffered? The

corresponding section is to be completed by the statement-taker. If the statement-giver considers himself/herself as belonging to more than one category, each corresponding section will be completed in turn.

Reference 171 - 0.01% Coverage

Appendix Two: List of Human Rights

Reference 172 - 0.01% Coverage

The Commission is established for the object of: Creating an impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone, from the beginning of the conflict in 1991 to the signing of the Lomé Peace Agreement on 7 July 1999; Addressing impunity; Responding to the needs of victims; Preventing a repetition of the violations and abuses suffered.

Reference 173 - 0.01% Coverage

To investigate and report on the causes, nature and extent of the human rights violations and abuses, and on the context in which these violations and abuses occurred;
To report on whether or not the human rights violations and abuses were the result of deliberate planning, policy or authorisation by any government, group or individual;

Reference 174 - 0.01% Coverage

To provide an opportunity to victims to give an account of the human rights violations and abuses they have suffered in order to assist them restore their dignity and to promote reconciliation;

Reference 175 - 0.01% Coverage

- If you have suffered a human rights violation or abuse or a violation or abuse in terms of international humanitarian law during the conflict period in Sierra Leone which you wish to share with the Commission;
- If you have a relative or a friend who has suffered a human rights violation or abuse or a violation or abuse of international humanitarian law and they are not able to make the statement themselves because they are dead or missing or not in an emotional frame of mind to do so themselves and you wish to share this information with the Commission;
- If you have witnessed a human rights violation or abuse or a violation or abuse of international humanitarian rights law and you wish to share this information with the Commission.

Reference 176 - 0.01% Coverage

You may also make a statement to the Commission if you have committed or been responsible for the commission of a human rights violation or abuse or a violation or abuse of international humanitarian rights law and you wish to share this information with the Truth and Reconciliation Commission;

Reference 177 - 0.01% Coverage

If you have witnessed a human rights violation or abuse or a violation or abuse of international humanitarian rights law and you wish to share this information with the Commission.

Reference 178 - 0.01% Coverage

The Commission will be requesting that political parties, civil society institutions and interested parties make submissions to it on their knowledge of the violations and abuses of human rights and international humanitarian law which has taken place. The Commission intends particularly to address the issue of whether these violations and abuses were the result of deliberate planning, policy or authorization by any government, group or individual as well as the role of both internal and external factors in the conflict.

Reference 179 - 0.01% Coverage

1. If this statement is about you and the human rights violations and abuses you have personally experienced or suffered, please complete section 3.
2. If this statement is made by you on behalf of a family member, a relative or a friend, who have experienced human rights violations and abuses, please complete section 4.
3. If this statement is about human rights violations and abuses you have witnessed, please complete section 5. In the case of mass victims, please give the Commission estimates of the numbers of people, their sexes, ages and any other relevant information that could enable the Commission disaggregate the information.
4. If this statement is about human rights violations and abuses you have carried out, please complete section 6.

Reference 180 - 0.02% Coverage

This section should be completed by victims and should relate to the human rights violations and abuses they have suffered.

1.1 Narration: Details of human rights violations and abuses Please tell the Commission about the violations and abuses you have suffered.

[illegible]

Reference 181 - 0.01% Coverage

1.2 Please provide the statement taker with details as to the date, places and circumstances of the human rights violations and abuses you have suffered.

Reference 182 - 0.01% Coverage

5.1 Are you able to confirm that other people have suffered human rights violations and/or abuses with you, in the same incident? YES

Reference 183 - 0.01% Coverage

6. Consequences of the human rights violations and abuses suffered

6.1 Did you sustain any physical or mental injury, damage or loss as a result of the human rights violation or abuse? YES

Reference 184 - 0.01% Coverage

6.5 What impact did the human rights violation or abuse have on you, eg are you disabled, have you lost your home, etc.? _____

Reference 185 - 0.01% Coverage

2.2 Please give details as to the date and places of the human rights violations and abuses suffered:

Reference 186 - 0.01% Coverage

4. Consequences of the human rights violations and abuses suffered

4.1 Did the victim sustain any physical or mental injury, damage or loss as a result of the human rights violation or abuse suffered? YES

Reference 187 - 0.01% Coverage

4.5 What impact did the human rights violations or abuses have on the victim, eg is he/she disabled, have he/she lost their home, is the victim dead, etc.?

Reference 188 - 0.01% Coverage

This section is to be completed if you were a witness to a human rights violation or abuse that has been committed.

1. Please tell the Commission what you saw happen. Details should include the following: nature of the human rights violations or abuses, place where the violations or abuses happened, date of the violations or abuses and the circumstances under which these human rights violations and abuses took place, including the ages, numbers and sexes of the victims.

Reference 189 - 0.01% Coverage

3. Please give details as to the place and date of the human rights abuse and/or violation suffered:

Reference 190 - 0.01% Coverage

4.1 Do you know what consequences the victim(s) has experienced following the human rights violations or abuses he/she/they suffered? YES

Reference 191 - 0.02% Coverage

This section of the statement form should be completed by those who have committed human rights violations and abuses. 1. Narration: details about human rights violations and abuses

1.1 Please tell the Commission about the human rights violations and abuses you have committed:

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Reference 192 - 0.01% Coverage

1.2 Please give details as to the date and place of the human rights violations and abuses:

Reference 193 - 0.01% Coverage

2. Command information 2.1 Were you acting under orders to commit the human rights violations and/or abuses? YES

Reference 194 - 0.01% Coverage

3.2 What was the reason or motive for the human rights violations or abuses?

3.3 What were the consequences for the victim(s) of the human rights violation or abuse?

Reference 195 - 0.01% Coverage

To provide public education on human rights particularly the human and other costs of human rights violations.

Reference 196 - 0.01% Coverage

Event-specific hearings. The Commission hopes to consider whether particular events served an especially catalytic role in the history of human rights abuse in Sierra Leone.

Reference 197 - 0.01% Coverage

Different kinds of violations – the range of violations that have taken place in Sierra Leone’s history. It is also desired to offer a full picture of the kind of repression suffered by victims so as to flag areas for institutional reform/retraining. This is also important to address violations that elucidate the broader sociopolitical environment that enabled human rights violations.

Reference 198 - 0.01% Coverage

The Commission will draw the attention of the media on sensitivity for journalists covering human rights issues, particularly regarding the respect of witnesses, the important role the media can play in using its coverage to catalyse public debate and interest about the historical patterns of human rights violations, the factors that enhance abuse of power, the complicity of different institutions, the space for dissent etc., and will encourage training on these issues.

Reference 199 - 0.01% Coverage

Produced by the TRC Steering Committee with support from the International Human Rights Law Group

Reference 200 - 0.01% Coverage

[T]he object for which the Commission is established is to create an impartial historical record of violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone, from the beginning of the conflict in 1991 to the signing of the Lomé Peace Agreement; to address impunity, to respond to the needs

Reference 201 - 0.01% Coverage

In making its findings and preparing its Report, the Commission took into account information gathered through a variety of means. Primary sources included: testimonies given by victims, witnesses and perpetrators at the Commission's hearings and during its statement-taking phase; the outcomes of investigation and research conducted by the Commission's staff; and the statistical or quantitative analysis derived from the Commission's database of human rights violations.

Reference 202 - 0.01% Coverage

The Commission recounts the story of the eleven-year conflict by charting its key events and dynamics in the military and political spheres. A description of the factors that led to the outbreak of hostilities is followed by a detailed accounting of the conflict itself, divided into three distinct 'phases'. Phase I (Conventional 'Target' Warfare: 1991-93) covers the early period defined by inter-factional fighting and the capture of territory. Phase II ('Guerrilla' Warfare: 1994-97) describes the shifts in tactics as attacks spread through the country. Phase III (Power Struggles and Peace Efforts: 1997-2000) reviews various military and political alliances, moves towards peace and the resumption of hostilities, before the conflict was finally declared over in 2002. Although each 'phase' assumed a slightly different character, they all shared one devastating characteristic: gross violations of human rights and international humanitarian law by all warring factions.

Reference 203 - 0.01% Coverage

Phase II began when the RUF launched a 'guerrilla' strategy, becoming less visible, less predictable, less consistent and less distinguishable. It expanded the scope and coverage of combat operations into every District of Sierra Leone. An RUF trademark was to carry out 'false flag' attacks dressed in full SLA military uniforms. This tactic, combined with increased human rights violations by soldiers, led to the breakdown in trust between the civilian population and the SLA. A 'Palace Coup' saw a change in the leadership of the NPRC and eventually secured a transition to democratic elections in 1996. Although marred by violence, the elections ushered in a new Sierra Leone People's Party (SLPP) Government headed by President Ahmad Tejan Kabbah. The Abidjan Peace Talks of 1996 were a false dawn and the SLPP Government endorsement of the Civil Defence Forces (CDF) as an arm of the state security apparatus further

Reference 204 - 0.01% Coverage

Phase III started with the bloody military coup of May 1997 and the appointment of Major Johnny Paul Koroma as Head of State. It heralded a large-scale shift in allegiance away from the SLA to a 'new' fighting force known as the Armed Forces Revolutionary Council (AFRC). The AFRC forged a military and political alliance with the RUF, creating the 'People's Army', a band of brutal and systematic violators of human

rights. President Kabbah established a War Council in Exile in Guinea, while Deputy Minister of Defence Chief Samuel Hinga Norman mobilised a vast but untrained force of Kamajors to oppose the AFRC military junta. In February 1998, a forceful intervention was led by West African 'peacekeeping' troops under the banner of ECOMOG, dividing the country along starkly factional lines. ECOMOG was the surrogate national Army in all but name, but its defence of strategic areas would prove disgracefully weak. The State of Public Emergency declared by the reinstated SLPP government encompassed four years and numerous illegal acts carried out on the premise of pursuing 'justice'. 24 SLA soldiers were executed by the state in 1998, which had a telling impact on the ongoing conflict. An AFRC-led wave of atrocities against the civilian population swept through the North of the country and met with no robust government response. The descent of the AFRC-led attackers onto Freetown in January 1999 wreaked havoc and horror in the city, constituting the nadir of the third phase.

Reference 205 - 0.01% Coverage

Of the various groups that comprised the CDF, the Kamajors received the most scrutiny, as they were responsible for almost all the CDF violations reported after 1996. Forced cannibalism is attributed only to the Kamajors. A defining characteristic of the CDF became its ceremony of 'initiation', described to the Commission by many witnesses as entailing physical and psychological torture as well as other gross abuses of human rights.

Reference 206 - 0.01% Coverage

Section 15(2) of the TRC Act mandates the Commission to make recommendations to help: 1) prevent repetition of the violations or abuses suffered; 2) respond to the needs of the victims; and 3) promote healing and reconciliation. To achieve these objectives, the Commission recommended the implementation of a reparations programme for Sierra Leone. The specific purpose of a reparations programme is to provide redress to the victims of human rights violations. The needs of the victims can be used to determine what benefits they should be accorded in such a programme.

Reference 207 - 0.01% Coverage

Reparations are the primary responsibility of the government. The government must ensure the implementation of a reparations programme. It is an accepted principle of international law that states may be held liable for human rights violations committed either by them or their agents. A violation of international human rights law or international humanitarian law imposes a duty on a state to afford adequate reparations. The state may also be responsible in certain circumstances for providing reparations for violations by non-state actors. In addition, the 1991 Constitution of Sierra Leone mandates the provision of redress for the violation of fundamental human rights.

Reference 208 - 0.01% Coverage

In determining the categories of beneficiaries for the reparations programme, the Commission first considered those victims who have become vulnerable as a result of having suffered human rights violations. Subject to practical limitations relating to state resources, the Commission recommends that the following list of victims be considered beneficiaries of the reparations programme: amputees and other war wounded, victims of sexual violence, children and war widows. Each category should be carefully defined to fit specific parameters and conditions. For example, child beneficiaries should include those who, as a result of the conflict, suffered physical injuries or psychological harm, were abducted or

forcibly conscripted, lost parents as a consequence of a violation as described in the Report or were born out of sexual violence and whose mother is single. In certain cases, the benefits of particular reparations measures may also confer upon various categories of 'indirect beneficiaries', such as wives and children of the eligible victims.

Reference 209 - 0.01% Coverage

Produced by the TRC Steering Committee with support from the International Human Rights Law Group

Reference 210 - 0.01% Coverage

f. The Judiciary, the Rule of Law and the Promotion of Human Rights g. Youth h. Children i. Women j. Mineral Resources k. TRC and the Special Court for Sierra Leone

Reference 211 - 0.01% Coverage

Government accountability was non-existent. Institutions meant to uphold human rights, such as the courts and civil society, were thoroughly co-opted by the executive.

Reference 212 - 0.01% Coverage

22. While the majority of victims were adult males, perpetrators singled out women and children for some of the most brutal violations of human rights recorded in any conflict.

Reference 213 - 0.01% Coverage

The Commission finds the leadership of the RUF, the AFRC, the SLA and the CDF to be responsible for either authorising or instigating human rights violations against civilians; alternatively for failing to stop such practices or to speak out against them; and for failing to acknowledge the atrocities committed by their followers or members.

Reference 214 - 0.01% Coverage

The Commission found the RUF to have been responsible for the largest number of human rights violations in the conflict.

Reference 215 - 0.01% Coverage

The Commission finds that the SLPP Government must bear responsibility for the excesses committed by the CDF. The Government failed to stop and address the Commission of human rights violations against civilians and initiates even when knowledge of such violations was brought to its attention.

Reference 216 - 0.01% Coverage

77. While the majority of victims were adult males, perpetrators singled out women and children for some of the most brutal violations of human rights recorded in any conflict. In a few cases, the children victimised were below ten years of age.

Reference 217 - 0.01% Coverage

The Commission finds the RUF, the AFRC and the SLA (when it operated with the AFRC) to be the primary organisations that committed violations against children. Of the violations known to the Commission with a victim with known age and alleged to have been committed by the RUF, 15.4% (3,090 out of 20,125 violations) were against children.¹⁸ The corresponding statistic for the AFRC (including the SLA when it operated with the AFRC) was 10.7% (603 out of 5,610 violations). The leaderships of these factions are held responsible for permitting the commission of gross human rights violations against children. There are no mitigating factors to justify such inhuman and cruel conduct.

Reference 218 - 0.01% Coverage

The RUF was the primary violator of human rights in the conflict. The AFRC was responsible for the second largest number of violations.¹⁹ The Sierra Leone Army (SLA)²⁰ was the third biggest violator, followed by the Civil Defence Forces (CDF).²¹

Reference 219 - 0.01% Coverage

The RUF and its supporters were responsible for the greatest number of human rights violations during the conflict period.

Reference 220 - 0.01% Coverage

Violations and abuses followed two principal sub-patterns within "hit and run attacks". "Hits" became gradually less discriminate in their targeting and transpired to inflict gross human rights violations on numerous civilian communities. Violations typically included killings on sight, detentions of civilians (often en masse in cramped conditions), beatings of captives and incidents of rape and gang rape.

Reference 221 - 0.01% Coverage

Sam Bockarie (alias "Mosquito") rose to prominence as both a Battlefield Commander of lethal prowess and a deviant of unknown quantity in Phase II of the war. He frequently disobeyed orders and committed human rights abuses with total abandon.

Reference 222 - 0.01% Coverage

175. On many occasions, the SLA acted against the Sierra Leonean people – the very people it was meant to defend. Soldiers perpetrated extensive human rights violations against the civilian population. A large number of soldiers collaborated with the RUF and later the AFRC. At times, troops masqueraded as rebel fighters while attacking convoys and villages in order to loot and steal.

Reference 223 - 0.01% Coverage

The Commission finds that the SLA committed numerous violations of human rights in its withering efforts to repel the RUF's campaign of guerrilla warfare.

Reference 224 - 0.01% Coverage

192. On two occasions, in 1992 and 1997, elements within the SLA acted unconstitutionally by seizing power from civilian governments, thereby fuelling the conflict and committing widespread human rights violations.

Reference 225 - 0.01% Coverage

The Commission finds the West Side Boys to have been one of the more ruthless offshoots of the SLA. They committed some of the most serious violations of human rights and displayed no respect for human life. They had no principled political allegiance. They acted both against and for the Government. The West Side Boys played a leading role in the invasion of Freetown on 6 January 1999, which visited mayhem and devastation on the city and its occupants. They were also deployed by Johnny Paul Koroma to murder and apprehend RUF members on and around 8 May 2000.

Reference 226 - 0.01% Coverage

The NPRC High command demonstrated a reactionary attitude towards complaints made against its commanders in the field. If a commander was found to be engaging in some kind of unlawful or unscrupulous activity, he would merely be switched and replaced. This was a weak measure that shirked the NPRC's responsibilities to curb human rights violations.

Reference 227 - 0.01% Coverage

The Commission finds further that the NPRC Government authorised a campaign of intimidation and human rights violations against certain individuals in public office who were related to or associated with those who were executed. One of them was Major Lucy Kanu, who was unlawfully dismissed from the Army in 1993. She was targeted because her husband was one of the alleged coup plotters of December 1992.

Reference 228 - 0.01% Coverage

The AFRC was a brutal and systematic violator of human rights whilst in office. The AFRC used the arms of the state to suppress freedom of expression and association, notably during its clampdown on the student demonstrations of 18 August 1997. Members of the AFRC engaged in the mass rape of student nurses at the College of Nursing in Freetown.

Reference 229 - 0.01% Coverage

The AFRC and RUF factions, both separately and in tandem with one another, visited a sustained and unprecedented level of human rights abuse on the populace of the North and North-East of Sierra Leone in 1998. The two organisations were not in fact acting in concert at the level of their respective High Commands. Rather, AFRC soldiers launched and led the assault through the North of the country and were joined only later by certain combatants from the RUF on a separate flank.

Reference 230 - 0.01% Coverage

The Commission finds the SLPP Government responsible for carrying out the arbitrary arrest and detention of a large number of citizens in violation of their constitutional rights from 1998 onwards. Many of these arrests and detentions, as well as the prosecutions and trials of this period were politically

motivated, representing a denial of basic rights. The Commission finds that the Court Martial of 37 soldiers of the SLA during 1998, resulting in the execution of 24 of them, was conducted in contravention of international human rights standards.

Reference 231 - 0.01% Coverage

The Commission finds the ongoing incarceration of sixteen persons in “protective custody” detention since June 2000 to be unlawful and a flagrant denial of those persons’ basic human rights.

Reference 232 - 0.01% Coverage

The Commission finds that at times broadcasts by Radio Democracy 98.1 FM were inflammatory and created the context for mob justice, in which human rights violations and abuses were carried out against civilians who were alleged, often wrongly, to have collaborated with the AFRC.

Reference 233 - 0.01% Coverage

The Commission finds that the SLPP Government was aware of human rights violations and abuses carried out by the CDF, through the role of its Deputy Defence Minister, Chief Sam Hinga Norman, who served as CDF National Co-ordinator, and through members of the CDF War Council at Base Zero. The Government was further kept informed through its Security Committee briefings and through reports received from ECOMOG. Nevertheless the Government failed to take steps to stop such violations and abuses. The Commission, accordingly, holds the Government responsible for the violations and abuses of human rights committed by the CDF.

Reference 234 - 0.01% Coverage

The Commission finds that the rounding up and detention of over 3, 000 (three thousand) citizens in the wake of the ECOMOG intervention of February 1998 constituted a mass violation of human rights.

Reference 235 - 0.01% Coverage

Mrs. Sylvia Blyden, a civil servant who had served the nation for some thirty years, was detained in February 1998 for nine months without charge. She was held on the strength of untested allegations against her. The Commission finds that the Government’s policy of detention inflicted terrible suffering on the citizens of Sierra Leone and their families and contravened their human rights.

287. An “AFRC collaborator” was generally understood to be someone who supported or sustained the junta in power. Accusations of “collaboration” often became a premise upon which human rights abuses were carried out.

Reference 236 - 0.01% Coverage

The Commission finds that the arrests, detentions, prosecutions and trials that followed the establishment of this Government policy were politically motivated and culminated in numerous human rights violations and abuses. The Commission finds that the departure from recognised legal and constitutional standards was the result of deliberate planning and authorisation by the Government of Sierra Leone. While the Government’s objective – to reassert its political ascendancy and send out a strong message that coup

plotters would not be tolerated – was just, the means used were not. The Commission finds that the means employed were unconstitutional and resulted in human rights violations and abuses.

Reference 237 - 0.01% Coverage

The Commission finds that conditions of detention at Pademba Road Prison in the period between February 1998 and 6 January 1999 were deplorable and in breach of multiple provisions of both the Sierra Leone Constitution and applicable human rights instruments, including the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights. These prison conditions have not changed at the time of writing this report and need the urgent attention of the Government.

Reference 238 - 0.01% Coverage

The Commission received testimony of substantial allegations of torture being practised against inmates of Pademba Road Prison, in flagrant breach of the Constitution, even under a regime of Emergency Powers. These testimonies came from multiple witnesses whose periods in detention were distinct and for separate reasons. They lead the Commission to find that the Government of Sierra Leone has systematically violated the Sierra Leone Constitution and human rights instruments including the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights.

Reference 239 - 0.01% Coverage

Detainees have been denied their human rights with regard to their conditions of detention. Protracted periods of solitary confinement and transfers to alternative detention facilities in undisclosed locations have been imposed on many of them. The Commission finds the Government to be accountable for this litany of human rights violations against detainees in its custody.

Reference 240 - 0.01% Coverage

The Commission finds that various institutions in the Government of Sierra Leone proved to be uncooperative and unhelpful to the Commission in its efforts to establish the full extent of human rights abuses that persist in the justice system to the present day. Some requests by the Commission to the Prisons Department were met with petty obstructionism.

Reference 241 - 0.01% Coverage

Under international human rights law, the Government is strictly responsible for violations resulting from the acts of its organs or agents and those of any persons acting under its control. The Government is also responsible for its own failure to prevent or take appropriate action in response to such violations.

Reference 242 - 0.01% Coverage

The Commission concludes that the CDF played a vital role in defending the nation from the predatory actions of rebel forces and renegade troops. However, the Commission finds that the CDF was itself responsible for considerable violations and abuses of human rights. Many of these violations and abuses were carried out with the full knowledge of the leadership of the CDF, which failed or omitted to intervene to stop the violations.

Reference 243 - 0.01% Coverage

Lack of oversight saw CDF fighters mete out arbitrary and summary justice to suspected RUF collaborators. Most CDF fighters were poorly trained and ill-disciplined, which resulted in the commission of human rights violations and abuses.

Reference 244 - 0.01% Coverage

sacrifice and cannibalism, which constitute grave violations of human rights.

Reference 245 - 0.01% Coverage

The Commission finds that ambiguity in the institutional character of the CDF precipitated a persistent lack of coherence, cohesion and co-ordination in its operations, which led to the commission of many human rights violations and abuses in the enforcement of what the massed ranks saw as the "law".

Reference 246 - 0.01% Coverage

The lack of effective oversight over the National Co-ordinator, the High Priest and the ground commanders of the CDF ultimately led to grave human rights violations being committed.

Reference 247 - 0.01% Coverage

Despite direct exposure to the deplorable acts that occurred at Base Zero, the members of the War Council at Base Zero shirked their moral responsibilities to intervene. They did nothing to prevent the mayhem that unfolded around them. In fact, by staying in a movement that had become a systematic violator of human rights, the members of the War Council lent legitimacy and their implicit endorsement to the atrocities committed by the Kamajors.

Reference 248 - 0.01% Coverage

The Commission finds that the members of the War Council bear moral responsibility for the escalating excesses of the Kamajors, which culminated in human rights violations and abuses.

Reference 249 - 0.01% Coverage

The Kamajors carried out "Operation Black December" in late 1997 and early 1998. It was purposely designed to debilitate the strongholds of the AFRC junta in the Southern and Eastern Provinces. In the process, it caused immense suffering to the civilian populations of many communities in these Provinces. It also led to massive and systematic human rights abuses including summary killings, torture and looting at checkpoints established by the Kamajors.

Reference 250 - 0.01% Coverage

"Operation Black December" was endorsed by the Government in Exile as an integral part of its interventionary initiatives to disrupt and then dislodge the AFRC junta. Chief Hinga Norman acted with the full and express support of the President and the War Council in Exile in ordering the operation to

take place. The Commission finds that the Government must take responsibility for the systematic violations and abuses of human rights carried out in its name by the Kamajors during this operation.

Reference 251 - 0.01% Coverage

The Commission finds the NPFL to have been a particularly brutal and pernicious organisation. The NPFL faction was responsible for most of the early human rights atrocities committed against civilians.

Reference 252 - 0.01% Coverage

The Commission finds that the inability of ECOMOG to sustain its intervention beyond Freetown in 1998 contributed to the prolonging of the conflict. The AFRC invasion of Freetown in January 1999 was poorly handled by ECOMOG. Some ECOMOG soldiers engaged in human rights violations during its defence of Freetown. These included the summary executions of suspected AFRC and RUF fighters and collaborators.

Reference 253 - 0.01% Coverage

The Commission holds the NPFL faction responsible for concerted campaigns of indiscriminate violence against the civilian population of the Kailahun District, between February and August 1992. Scores of RUF personnel, both among the "vanguards" and the "junior commandos" categories, were singled out for violations and abuses of their human rights, including torture and summary killings, at the hands of their NPFL compatriots.

Reference 254 - 0.01% Coverage

397. Some ECOMOG soldiers engaged in human rights violations during the defence of the city. The Commission finds that ECOMOG soldiers committed summary executions of civilians, mostly in Freetown, while repelling the invasion of January 1999. These executions were directed largely at persons accused of being "collaborators". With mounting losses, many of the ECOMOG soldiers lashed out to avenge the deaths of personal friends and colleagues. Many of those killed by ECOMOG were pointed out by Sierra Leonean civilians as "collaborators".

Reference 255 - 0.01% Coverage

Executive Outcomes engaged the RUF on several occasions; however the Commission's database has not recorded a single allegation of any human rights violation against the mercenaries. The Commission however notes that a large number of civilians were killed when Executive Outcome helicopter gunships attacked RUF jungle bases between 1995 and 1996.

Reference 256 - 0.01% Coverage

FINDINGS IN RESPECT OF THE JUDICIARY, THE RULE OF LAW AND THE PROMOTION OF HUMAN RIGHTS

Reference 257 - 0.01% Coverage

Lawyers should be the first line of defence whenever the human rights of the people are transgressed. This has not happened in Sierra Leone. Indeed lawyers – through their collective inaction – have contributed substantially to the massive abuse of human rights before, during and after the war.

Reference 258 - 0.01% Coverage

President Kabbah and his government proceeded with the executions of 24 soldiers in 1998, ignoring an appeal from the United Nations Human Rights Committee not to proceed with the executions. The executions were subsequently declared to have violated both the International Covenant on Civil and Political Rights³³ and the African Charter on Human and Peoples' Rights.³⁴ The Commission endorses these findings against the Sierra Leone Government by the African Commission on Human and Peoples' Rights.

Reference 259 - 0.01% Coverage

The Commission finds that many youths became both victims and perpetrators in the war. Those who were abducted and forced to engage in violence, under threat of death, were victims. They then became perpetrators, when carrying out human rights violations against civilians. This was often done after being compelled to consume a concoction of drugs. While perpetrating the most horrific atrocities under the influence of drugs, it can be said that these youths were victims at the same time. They will carry the psychological scars of their experiences for the rest of their lives. The Commission holds the entire leadership of the RUF responsible for masterminding these pernicious and brutal strategies, or alternatively for failing to stop such practices.

Reference 260 - 0.01% Coverage

The Commission finds that the abduction and forced recruitment of children was in clear contravention of the Convention on the Rights of the Child and its optional protocols. The Commission holds the leadership of the RUF, CDF, AFRC and SLA accountable for gross violations of the human rights of children.

Reference 261 - 0.01% Coverage

The Commission finds that the Civil Defence Forces (CDF) were responsible for recruiting children for the purpose of compelling them to become soldiers in the conflict. The Commission finds that this practice was in clear contravention of international human rights law and international humanitarian law.

Reference 262 - 0.01% Coverage

The Commission finds that SLA soldiers were responsible for violations on children such as torture, amputations, mutilations and assaults. The Commission finds that the leadership of the SLA failed to take adequate steps to stop and prevent the commission of gross violations of human rights against children.

Reference 263 - 0.01% Coverage

The Commission finds that, during the conflict in Sierra Leone, all armed groups perpetrated human rights violations against women and girls. Women and girls were targeted for rape and sexual slavery.

Reference 264 - 0.01% Coverage

The Commission finds that the RUF was the primary perpetrator of human rights violations against women and girls. The RUF was responsible for targeting women and girls, abducting them with the express intention of exploiting their vulnerability.

Reference 265 - 0.01% Coverage

The Commission finds that the AFRC planned, authorised and executed a strategy to target women and girls during the invasion of Freetown in January 1999. AFRC combatants targeted women and girls with the express intention of abducting them, raping and sexually violating them and pursuing a range of other human rights violations against them.

Reference 266 - 0.01% Coverage

The practice of disembowelling pregnant women with the intention of removing the foetus constitutes 'enforced sterilisation' in terms of international human rights law.

Reference 267 - 0.01% Coverage

Those areas of the country rich in diamonds and other mineral resources were systematically targeted by the warring groups, especially the RUF, the AFRC and the CDF. The targeting of these areas led to the commission of extensive human rights violations on civilians and the displacement of large numbers of people. Community life in these areas was significantly disrupted.

Reference 268 - 0.01% Coverage

In the light of developments in post-conflict societies in the late 20th and early 21st centuries relating to past human rights violations, there exists on the part of victims a right to know the truth. Truth Commissions have been established in several countries around the world to meet that recognised obligation. The Commission finds that there is considerable weight to the argument that establishing the "truth" is an essential component of the universally recognised "right to an effective remedy".

Reference 269 - 0.01% Coverage

Accordingly, courts are limited in their ability to reach the broader truth. Indeed, where violations of human rights have become endemic, individual prosecutions of just a handful of alleged perpetrators are unlikely to reveal the full knowledge of the cruelty and extent of the violations.⁵² Truth Commissions, by contrast, are designed and set up specifically for that purpose.

Reference 270 - 0.01% Coverage

See the Report of the Inter-American Commission on Human Rights in the case of Monseñor Oscar Arnulfo Romero and Galdamez v. El Salvador, Report No. 37/00 of 13 April 2000.

Reference 271 - 0.01% Coverage

Produced by the TRC Steering Committee with support from the International Human Rights Law Group

Reference 272 - 0.01% Coverage

The Commission is of the view that the adoption of its recommendations will assist the people of Sierra Leone to rise above the bitter conflicts of the past, which caused unspeakable violations of human rights and left a legacy of dehumanisation, hatred and fear.

Reference 273 - 0.01% Coverage

The Commission has rather opted to focus on recommendations that serve to establish and safeguard certain rights, principles and values, consistent with its mandate, which is focussed upon violations and abuses of human rights and international humanitarian law. These rights and values are those that have not as yet been established in Sierra Leone or are under serious threat. The Commission views the implementation of its recommendations as the starting point to prevent the repetition of conflict.

Reference 274 - 0.01% Coverage

The Commission identified a need for individual and national restoration of dignity and the establishment of a new rights culture in Sierra Leone; a rights culture in which all Sierra Leoneans respect each other's human rights, without exception. Under the heading "Protection of Human Rights", the Commission recommends the enshrining of the right to human dignity in the Constitution and the upholding of the right to human life.⁶

Reference 275 - 0.01% Coverage

See "Human Dignity" and "Human Life" under the heading "Protection of Human Rights". See "Freedom of Expression" under the heading "Protection of Human Rights". See "Citizenship" under the heading "Protection of Human Rights". See "The Constitution" under the heading "Protection of Human Rights".

Reference 276 - 0.01% Coverage

o THE PROTECTION OF HUMAN RIGHTS Human Dignity, Human Life, Arbitrary Detention, Emergency Powers, Freedom of Expression, Citizenship, Corporal Punishment, Promoting a Human Rights Culture, Human Rights Commission, The Role of the Judiciary in Protecting and Advancing Human Rights, Customary Law and Human Rights, International Human Rights Obligations, the Constitution

Reference 277 - 0.01% Coverage

"Lustration" means the disbarment of officials of a previous regime from public office on the basis of violations and abuses of human rights committed by them.

Reference 278 - 0.01% Coverage

o FOLLOW-UP COMMITTEE Human Rights Commission and Civil Society, Reporting

Reference 279 - 0.01% Coverage

THE PROTECTION OF HUMAN RIGHTS

Reference 280 - 0.01% Coverage

Under this heading, the Commission seeks to promote the creation of a human rights culture in Sierra Leone. A rights culture is one in which there is knowledge and recognition of the basic rights to which all human beings are entitled. A rights culture demands that we respect each other's human rights, without exception.

Reference 281 - 0.01% Coverage

The Commission identifies a need for individual and national restoration of dignity. This requires individual and collective action. Each and every Sierra Leonean bears responsibility for this. There can be no lapses in the responsibility of respecting and upholding the fundamental human rights of all in Sierra Leone. This responsibility endures forever.

Reference 282 - 0.01% Coverage

Respect for human dignity and human rights must begin with respect for human life. Everyone has the right to life. A society that accords the highest respect for human life is unlikely to turn on itself.

Reference 283 - 0.01% Coverage

This is in line with the African Commission on Human Rights and Peoples' Rights resolution on the death penalty adopted at the 26th

Reference 284 - 0.01% Coverage

The deprivation of liberty is a serious infringement of human rights. It is, however, legitimate when sanctioned by rules and laws which accord with principles of fairness and due process. Arbitrary arrest and detention without trial cannot be tolerated in a just and democratic society.

Reference 285 - 0.01% Coverage

Several of the detainees have been held in detention without charge or trial since 2000. The detention of such persons constitutes a gross and unjustifiable violation of their human rights. The Commission recommends the immediate release of all persons held in "safe custody detention". The Commission further recommends that such detention never be resorted to again.

Reference 286 - 0.01% Coverage

It is not possible to engage in a serious discourse on human rights and the rule of law in Sierra Leone, while such violations of human rights persist.

Reference 287 - 0.01% Coverage

The imposition of emergency powers inevitably results in the denial of human rights. Emergency provisions have been used to silence political opponents who posed challenges to different regimes. The resort to emergency powers to deal with political opposition is a sign of failure on the part of the government to govern effectively.

Reference 288 - 0.01% Coverage

The United Nations Human Rights Committee has attempted to prepare guidelines for the use of states of emergencies. The Committee declares that even in a state of emergency:

Reference 289 - 0.01% Coverage

The President is given wide powers under sections 29(5) and (6) to make regulations and take measures during a period of public emergency that may have the effect of suspending all fundamental human rights. authorising such powers should be removed from the Constitution.

Reference 290 - 0.01% Coverage

Laws and regulations made under a public emergency should deviate from the protection of fundamental human rights and freedoms²³ only to the extent that the deviation is strictly required by the emergency. The Commission makes specific recommendations as to which rights should not be derogated or deviated from in the table below. Column 4 of the table below sets out those portions of the rights that the Commission recommends should not be derogated from. Such rights are sometimes referred to as "non-derogable" rights. These recommendations require the amendment of sections 29(5) and 29 (6) of the Constitution.

Reference 291 - 0.01% Coverage

Fundamental human rights and freedoms are set out in Chapter III of the 1991 Constitution. Vol Two Chapter Three

Reference 292 - 0.01% Coverage

The Commission calls on the Sierra Leone Association of Journalists and the Media Commission to be more proactive in monitoring standards of journalism practiced in Sierra Leone and to establish mechanisms for effective selfregulation. These organisations can do much to advance a culture of human rights in Sierra Leone.

Reference 293 - 0.01% Coverage

In a "friend of the court" brief submitted on 6 May 2004, the Open Society Justice Initiative urged the Inter-American Court of Human Rights to seize an historic opportunity to advance freedom of expression by outlawing criminal defamation. The brief notes a growing consensus worldwide that criminal defamation statutes hinder free expression. "A society cannot be free if its citizens must avoid criticism of public officials out of fear of criminal prosecution," the brief argues. The case involved two Costa Rican publishers who had been found guilty of criminal defamation. The InterAmerican Commission has already found that Costa Rican law violates the American Convention on Human Rights by criminalising publications on matters of public interest, such as the conduct of public officials.

Reference 294 - 0.01% Coverage

Promoting a Human Rights Culture 94.

Several submissions made to the Commission urged it to recommend that human rights and peace studies should be introduced into the curriculum at schools. The Commission agrees. The teaching of tolerance and understanding should start as early as possible in the education of children.

Reference 295 - 0.01% Coverage

Sierra Leone, known in recent times for its unspeakable atrocities and untold suffering, can become known for its compassion and respect for human rights. It should become a centre of dialogue on tolerance and the preservation of peace.

Reference 296 - 0.01% Coverage

The Commission recommends the development of a compulsory programme of human rights education into schools at the primary, secondary and higher levels of education. Human rights education should become part of the formal curriculum and be examinable. Appropriate human rights and peace programmes should be compulsory for the training of recruits into the army, police and judicial service. The Government should work towards the fulfilment of these recommendations.

Reference 297 - 0.01% Coverage

The Commission notes that the Fourah Bay College Human Rights Clinic conducts classes on human rights issues in secondary schools.

Reference 298 - 0.01% Coverage

Human Rights Commission 98.

A Human Rights Commission (HRC) can serve as both a watchdog and a visible route through which people can access their rights. Such a commission can help create a national culture of human rights through its advocacy, research and legal functions. Above all it must monitor and assess the observance of human rights throughout the country. Individuals who claim that their human rights have been violated should be able to submit complaints for investigation.

Reference 299 - 0.01% Coverage

A Human Rights Commission must have the power to take steps to secure appropriate redress where human rights have been violated. 31 It should have the authority to require relevant organs of state to provide the Commission with information on the measures that they have taken towards the realisation of rights.³² The powers and mandate of the HRC should accord with guidelines set out in the Paris Principles.³³

100. While the HRC should be accountable to Parliament and not to the executive arm of government it can provide advice and support to government on human rights matters. Currently no institution has the expertise and mandate to advise the three branches of the State on how to effectively meet international obligations by incorporating human rights concepts into laws, policies and day-to-day activities. A Human Rights Commission can monitor legislation before Parliament. It can monitor how the government enforces constitutionally guaranteed political, civil, social, economic and cultural rights.

101. The Lomé Peace Accord required the establishment of an "autonomous quasijudicial National Human Rights Commission"³⁴ within 90 days after the signing of the Accord. Such a Commission is still not in place.

Reference 300 - 0.01% Coverage

Many Human Rights Commissions, apart from monitoring the upholding of fundamental human rights, also monitor the provision of housing, health care, food, water, social security, education and the protection of the environment.

Reference 301 - 0.01% Coverage

In 1992, the U.N. Commission on Human Rights endorsed a set of internationally recognized principles concerning the status, powers and functioning of national human rights institutions. The U.N. Principles relating to the Status of National Institutions, known as the Paris Principles, which were subsequently endorsed by the U.N. General Assembly in 1993, set out the basic guidelines recommended by the U.N. in the establishment of a national human rights institution. The U.N. defines a national human rights institution as a government body established under the constitution or by law, whose functions are specifically designed to promote and protect human rights. The Paris Principles stress, as fundamental features designed to contribute to independence, the need for: a founding constitutional or legislative statute; as broad a mandate as possible; an independent appointments procedure, with terms of office specified by law; a pluralistic and representative composition; independence from the executive branch; and adequate funding. Such institutions should be able to take up any human rights matter at their own initiative, at the suggestion of government, and at the request of "any petitioner."

Reference 302 - 0.01% Coverage

The Role of the Judiciary in Protecting and Advancing Human Rights

104. The Commission calls on the judiciary not to permit laws or practices to stand which are contrary to justice or which undermine the rights to liberty, equality and justice. Clauses that oust the jurisdiction of the courts in matters pertaining to fundamental human rights should be declared illegal.

105. When interpreting any legislation and when developing the common law or customary law the judiciary should promote the spirit and purpose of Chapter III of the Constitution, the Recognition and Protection of Fundamental Human Rights and Freedoms of the Individual. The Commission calls on the judiciary to uphold the values that underlie an open and democratic society. These values include human dignity, equality and freedom.

Reference 303 - 0.01% Coverage

Customary Law and Human Rights

107. While the institution, status and role of traditional rules and custom should be respected they must be subject to the Constitution. Some elements of customary law and Islamic Law contradict basic human rights.³⁶ A girl is considered to be marriageable, for example, once her breasts have developed, her menses have started, and she has been initiated. This could mean that a girl as young as 12 is put up for marriage.

Reference 304 - 0.01% Coverage

110. When codifying customary law, the Commission recommends that the drafters pay particular attention to those aspects of customary law that offend basic human rights. Such laws should not become part of an enforceable code of customary law. However, the reform of customary law should be

undertaken creatively and democratically. The process of reform should commence with the people it will affect, such as women and peasant farmers at chiefdom level. They should be consulted on how they would like to see customary law changed.

Reference 305 - 0.01% Coverage

International Human Rights Obligations 112.

Sierra Leone is a party to the seven major international human rights treaties within the United Nations system. 39

Reference 306 - 0.01% Coverage

and has not yet been produced.⁴¹ Its initial report to the Human Rights Committee was due on 22 November 1997, and has not yet been produced.⁴² Its initial report to the Committee on Economic, Social and Cultural Rights was also due on 22 November 1997, but is overdue.⁴³ Sierra Leone submitted an initial report to the Committee on the Rights of the Child, in June 1996,⁴⁴ which was discussed by the Committee in 2000. A subsequent report was due on 1 September 1997, and has not yet been produced. Its initial report to the Committee Against Torture was due on 24 May 2002, and has not been produced.⁴⁵ In all, Sierra Leone has a total of 24 (twenty-four) reports that are due according to the treaties and that it has not submitted.

Reference 307 - 0.02% Coverage

An alarming gap in Sierra Leone's participation in international human rights treaties is its failure to ratify the Convention on the Prevention and Punishment of the Crime of Genocide, which was adopted by the United Nations in 1948. Sierra Leone has also failed to cooperate with United Nations human rights officials, such as the Special Rapporteur on Extra-judicial, Summary and Arbitrary Executions, which is a special procedure of the United Nations Commission on Human Rights.⁴⁶

116. While it is commendable that Sierra Leone has undertaken the obligations by ratifying or acceding to all seven of the principal United Nations human rights treaties, and several of the other international human rights instruments, this would seem to be little more than a mere formality, if we are to judge by its failure to submit reports.

117. The Commission recommends that the Government of Sierra Leone take these obligations more seriously. It should not be difficult to obtain technical assistance for the preparation of the overdue reports, either from the Office of the High Commissioner for Human Rights or from international human rights NGOs. The Commission also recommends that Sierra Leone promptly ratify or accede to the international human rights treaties that it has not yet accepted.⁴⁷

118. Finally, Sierra Leone should put in place procedures and mechanisms within the relevant government ministries to ensure that any petitions directed against it to the Human Rights Commission, the African Commission on Human and Peoples' Rights, and similar bodies, are answered promptly and faithfully, and that requests for information from the Special Rapporteurs of the United Nations and the African Commission are treated seriously and with respect.

Reference 308 - 0.01% Coverage

It would be desirable to reformulate the fundamental rights provisions of the Constitution, not only by shortening them and making them simple and accessible, but also by ensuring their compatibility with Sierra Leone's international obligations. The Constitution should declare that the country's international

obligations with regard to the protection of human rights are incorporated in the Constitution and subject to direct application by the courts.

Reference 309 - 0.01% Coverage

Inequitable law, separate court systems, lack of access to courts, few lawyers, and a confusion of administrative and judicial roles all conspired to prevent the application of the rule of law in Sierra Leone. Courts rarely protected human rights or policed administrative irregularity.

Reference 310 - 0.01% Coverage

The Attorney General is also expected to ensure to the full extent of his or her authority that government takes place within a framework of law; that government and official agencies adhere to international human rights standards; and scrutinise new or proposed legislation.

Reference 311 - 0.01% Coverage

171. The organised bar is in a good position to be a powerful watchdog and should add its voice in protest, when human rights are abused and the rule of law is threatened. The Commission calls upon lawyers to stand up to injustice.⁶²

Reference 312 - 0.01% Coverage

174. The Commission calls upon the Sierra Leone Bar Association to become the guardians of the protection of the Rule of Law and the human rights of Sierra Leoneans. The Bar Association should require that its members receive mandatory continuing education in human rights law and related subjects.

Reference 313 - 0.01% Coverage

Examples of legal assistance organisations that have been successful in providing meaningful access to the courts include the Legal Assistance Centre (Namibia), the Legal Resources Centre (South Africa), the Legal Resources Foundation (Zambia), the Legal Resources Foundation (Zimbabwe), Legal Mozambique Dos Direitos Humanos (Mozambique), Centre for Advice and Education on Rights (Malawi), Legal Services Centre (Zanzibar), Legal and Human Rights Centre (Tanzania), Legal Aid Project of the Law Society of Uganda, Ditshwanelo (Botswana). The Lawyers' Centre for Legal Assistance (LAWCLA) could perhaps be transformed into a

Reference 314 - 0.01% Coverage

182. The Commission calls on the judiciary to take a pro-active approach to the protection of human rights.

Reference 315 - 0.01% Coverage

These courts include the High Court and Supreme Court of Zambia, Nigerian Supreme Court, the Constitutional Court of South Africa, the Supreme Court of Appeal of South Africa, the U.S. Supreme Court, the Supreme Court of Canada, the High Court of Australia, and the European Court of Human Rights. Decisions from Kenya, Tanzania and Uganda are online through the website: lawafrica.com.

Quicklaw, a Canadian legal database, has an arrangement with the Canadian Bar Association whereby judges worldwide who provide their judgments get free access. Such legal texts and law reports could be donated in either hard copy or electronic versions, or both. Law reports should be updated on a regular basis as part of the donation.

Reference 316 - 0.01% Coverage

Parliament, as the principal law-making body in Sierra Leone, has a special responsibility to check abuse by the executive branch. Since independence, however, Parliament has shown itself to be a servile agent of the executive, lacking courage and determination to resist tyranny and to ensure respect for democracy and human rights in Sierra Leone.

Reference 317 - 0.01% Coverage

Parliament and its committee on justice affairs should be closely scrutinising the work of the judiciary and the administration of justice. Individual members of the legislature are well placed to direct questions to the relevant Ministers on the progress of reforms. Parliament should be closely monitoring human rights in Sierra Leone. Questions should be raised with regard to human rights violations and the failure of governmental organs to investigate and prosecute such abuses.

Reference 318 - 0.01% Coverage

The Commission seriously considered whether to recommend lustration in the public service and the security forces. Lustration would involve the purging from these institutions of all public officials, soldiers and police members tainted by the fact that they committed human rights violations or engaged in corrupt acts in the past. After much reflection, the Commission decided not to recommend lustration.

Reference 319 - 0.01% Coverage

The Commission recommends that the Government work towards the harmonisation of the customary law with the common law and that to ensure laws dealing with the protection of women, particularly in regard to domestic violence and crimes of sexual violence, accord with international human rights standards.

Reference 320 - 0.01% Coverage

The Commission has found that in the Sierra Leone conflict children¹²⁵ were singled out for some of the most brutal violations of human rights recorded in any conflict. The children targeted were sometimes even below ten years of age.

Reference 321 - 0.01% Coverage

The Commission recommends that the government review the practice of employing children under the age of 18 on a full-time basis. Children who are employed should work under conditions that are humane and which comply with international human rights standards.¹³¹

Reference 322 - 0.01% Coverage

423. Some ECOMOG Peacekeepers committed human rights violations while in Sierra Leone. The Commission recommends that part of the capacity building of ECOWAS peacekeepers should include training on human rights issues. The Commission recommends further that ECOMOG soldiers accused of having committed human rights violations during the Sierra Leone conflict should be investigated. Those soldiers found to be responsible for human rights violations should be excluded from future peacekeeping missions.

Reference 323 - 0.01% Coverage

There are reports, which state that the official minimum age for employment is 18, with the (See US Department of State, Country Reports on Human Rights Practices – 2002,

Reference 324 - 0.01% Coverage

In future post-conflict transitional justice arrangements, the international community and national governments should seriously consider a major investment in the national justice system instead of, or in addition to establishing international tribunals to investigate and prosecute violations of human rights.

Reference 325 - 0.01% Coverage

The Commission proposes that the Reparations programme should be co-ordinated by the National Commission for Social Action (NaCSA). It is envisaged that NaCSA, as the "Implementing Body" entrusted with governing the Special Fund for War Victims, will ensure the decentralisation of programmes in conjunction with different Ministries. It is proposed further that NaCSA should be assisted by an Advisory Committee. The Commission recommends that the National Human Rights Commission perform the role of the Advisory Committee.

Reference 326 - 0.01% Coverage

physically disabled, either totally or partially, as a consequence of a violation or abuse other than amputation. Examples may be victims who received lacerations, who lost body parts other than their limbs (such as fingers, ears, lips and toes), or have gunshot wounds, bullets or shell fragments in their bodies in so far as they are totally or partially disabled as a consequence of a human rights

Reference 327 - 0.01% Coverage

The authorities detained Mrs. Sylvia Blyden, a civil servant who had served the nation for some thirty years, in February 1998 for nine months without charge. She was held on the strength of untested allegations against her. The Commission recommends that the wrongs suffered by such individuals be redressed. In particular the Commission recommends that their good names be formally restored. The Human Rights Commission (HRC) should be tasked with investigating all cases of political persecution of public office-holders with a view to restoring people's good names where necessary, by way of a public finding. All those in the public sector who suffered political persecution during the conflict period should be able to approach the HRC for such relief.

Reference 328 - 0.01% Coverage

In order to realise these objectives the Commission recommends that the National Vision fall under the wing of its successor body, the proposed National Human Rights Commission (HRC) or, alternatively, that the National Vision work in close collaboration with the HRC. Pending the formation of the HRC, the Commission recommends that civil society and the Government commit themselves to keeping the National Vision alive and to establishing a provisional vehicle or structure under which its activities can continue.

Reference 329 - 0.01% Coverage

The Commission recommends that the National Human Rights Commission (HRC) should become the official custodian of all Commission documentation and materials. Pending the creation of the HRC, the Commission's documents should be held at the National Archives.

Reference 330 - 0.01% Coverage

The Commission encourages the production of popular versions and summaries of its Report. These should be produced in consultation with the Human Rights Commission, when it is established.

Reference 331 - 0.01% Coverage

The video version of the TRC report, entitled "Witness to Truth", was produced by WITNESS, the New York-based human rights NGO (www.witness.org), in collaboration with the Commission.

Reference 332 - 0.01% Coverage

The Commission recommends that the full contents of the Report and its appendixes should be made available on the Internet. A website should be established to host the Report, which should be properly maintained. The Commission calls on local and international organisations involved in online human rights education to support such a project.

Reference 333 - 0.01% Coverage

Human Rights Commission and Civil Society 550.

Reference 334 - 0.01% Coverage

PROTECTION OF HUMAN RIGHTS Imperative

Reference 335 - 0.01% Coverage

Compulsory human rights education in schools, army, police and judicial services.

Reference 336 - 0.01% Coverage

Creation of National Human Rights Commission (HRC). Public and open nomination process for

Reference 337 - 0.01% Coverage

Ratify or accede to international human rights treaties that Sierra Leone has not yet accepted. Submit outstanding reports under its International Human Rights Obligations.

Reference 338 - 0.01% Coverage

The Judiciary to take a pro-active approach to the protection of human rights.

Reference 339 - 0.01% Coverage

Lawyers and the organised Bar to stand up to injustice. Bar Association to become the guardians of the Rule of Law and human rights in Sierra Leone.

Reference 340 - 0.01% Coverage

ECOMOG soldiers found responsible for human rights violations to be excluded from peacekeeping missions in future.

Reference 341 - 0.01% Coverage

The National Vision to fall under the wing of the Human Rights Commission.

Reference 342 - 0.01% Coverage

Produced by the TRC Steering Committee with support from the International Human Rights Law Group

Reference 343 - 0.01% Coverage

Article XXVI of the Lomé Peace Agreement obliges the Commission to, "among other things, recommend measures to be taken for the rehabilitation of victims of human rights violations."

Reference 344 - 0.01% Coverage

In designing a reparations programme for the victims of the Sierra Leonean conflict, the Commission had to take into account a number of factors. It would have been gratifying if all victims of the conflict could benefit from a reparations programme but such a programme would be totally impossible for the country to implement. The Commission therefore had to determine who would benefit from a reparations programme. The Commission determined the category of beneficiaries by considering those victims who were particularly vulnerable because of the human rights violations they had suffered and the harm that they continued to live with.

Reference 345 - 0.01% Coverage

The purpose of a reparations programme is to provide redress and accord a measure of social justice to victims of human rights violations. Under international law, victims can obtain redress either through political means such as reparations programmes or pursue legal recourse through the civil courts. However, as in many post-conflict societies, it is not possible to prosecute perpetrators or seek civil damages through the courts.

Reference 346 - 0.01% Coverage

The right to seek redress is enshrined both in Sierra Leone's domestic law and in international law. Under domestic law, references will be made to the provisions of the 1991 Sierra Leone Constitution. Under international law, the Commission focused its attention on the obligation of the state to provide reparations to victims of human rights abuses.

Reference 347 - 0.01% Coverage

Chapter III of the 1991 Constitution of Sierra Leone provides a list of fundamental human rights and freedoms to which every Sierra Leonean is entitled. Those fundamental human rights and freedoms that were violated during the war include the protection of right to life, protection from arbitrary arrest or detention, protection from slavery and forced labour, and protection from inhuman treatment.

Reference 348 - 0.01% Coverage

Section 28(1) of the 1991 Constitution of Sierra Leone allows victims of fundamental human rights abuses to seek "redress" before the Supreme Court of Sierra Leone.

Reference 349 - 0.01% Coverage

It is an accepted principle in international law that states may be held liable for human rights violations committed either by them or by their agents. The breach of its international obligations imposes a duty on a State to afford adequate reparation.² A "breach of an international obligation" includes the violation of international human rights law or international humanitarian law.

Reference 350 - 0.01% Coverage

Further, several international human rights instruments impose on States the duty to provide the individual with "an effective remedy", "effective protection and remedies", "redress and an enforceable right to fair and adequate compensation". Examples include Article 8 of the Universal Declaration of Human Rights, Article 2.3 of the International Covenant on Civil and Political Rights, Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Articles 7 and 21 of the African Charter on Human and Peoples' Rights. The Conventions and Charter have all been ratified by Sierra Leone.

Reference 351 - 0.01% Coverage

A study conducted by Theo Van Boven, who was appointed by the UN SubCommission on the Prevention and Protection of Minorities in 1989 to explore what remedies could accompany violations of human rights, concluded that gross violations of human rights are by their nature irreparable and that any remedy or redress will fail to be proportional to the grave injury inflicted, particularly when the violations have been committed on a massive scale.³ He was of the view that

Reference 352 - 0.01% Coverage

Professor Van Boven published a preliminary report on reparations for gross violations of human rights in 1990 and finalized his report in 1993, annexing draft principles on restitution,

Reference 353 - 0.01% Coverage

The "Draft Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Violations of International Human Rights Law and International Humanitarian Law", submitted by Special Rapporteur M.C. Bassiouni to the UN Commission on Human Rights,⁶ is indicative of the current status of international law of the right to redress of victims of such violations. According to the Draft Basic Principles and Guidelines, every State has the obligation to respect, ensure respect for and enforce international human rights and humanitarian law norms. This obligation includes the duty to afford appropriate remedies to victims and provide for or facilitate reparations to victims.

Reference 354 - 0.01% Coverage

The Draft Basic Principles further indicate that remedies for violations of international human rights and humanitarian law include reparations for harm suffered. It is also stated that a State shall provide reparations to victims for its acts or omissions constituting violations of international human rights and humanitarian law norms.

Reference 355 - 0.01% Coverage

The Commission took the view that the State has a legal obligation to provide reparations for violations committed by both state actors and private actors. The Commission is of the opinion that all victims should be treated equally, fairly, and justly. Given the nature of the conflict in Sierra Leone, it was not always possible to identify the perpetrators or the group they belonged to. States have the obligation to guarantee the enjoyment of human rights and to ensure that human rights violators are brought to justice and that reparations are made to victims.⁷ compensation, and rehabilitation. The final report was sent to the United Nations Commission on Human Rights for consideration at its 1994 session.

Reference 356 - 0.01% Coverage

Ibid. In 1996, Van Boven submitted a revised set of proposed basic guidelines on remedies which is published by the Sub Commission on the Prevention of Discrimination and Protection of Minorities, E/CN./Sub.2/1996/17. In 1998, the UN Commission for Human Rights called for the appointment of another expert to prepare a final draft for its 1999 session with the intention that these principles would be submitted to the United Nations General Assembly for adoption. Subsequent to the publication of the Commission's final report, the United Nations authorized a further study on the subject of reparations. On the 18 January 2000, a working group headed by Professor M. Cherif Bassioni, drew up a report which incorporated the UN "Draft Principles and Guidelines on the right to Remedy and Reparations for Victims of Violations of International Human Rights and Humanitarian Law."

Reference 357 - 0.01% Coverage

M.C. Bassiouni, "The right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms," final report of the Special Rapporteur M.C. Bassiouni submitted to the UN Commission on Human Rights on 18 January 2000, incorporating the "Draft Principles and Guidelines on the Right to Remedy and Reparation for Victims of Violations of International Human Rights

and Humanitarian Law." (E/CN.4/2000/62). At the time of the writing of the Commission's Final Report a new version of these "Principles and Guidelines" is being discussed.

Reference 358 - 0.01% Coverage

The Inter-American Court of Human Rights and the Peruvian Truth and Reconciliation Commission are among the institutions that have held a similar view. For the Inter-American Court of Human Rights, see the "Velasquez Rodriguez Case," judgment of 29 July 1988, Series C, No. 4 (1988), in particular paragraphs 166 and 174. For the Peruvian Truth and Reconciliation Commission, see its final report, Vol. IX, pp. 149-150.

Reference 359 - 0.01% Coverage

States do not only have an obligation to respect human rights themselves; they are also obliged "to ensure compliance with international obligations by private persons and an obligation to prevent violations. If governments fail to apply due diligence in responding adequately to, or in structurally preventing human rights violations, they are legally and morally responsible."⁸

Reference 360 - 0.01% Coverage

In its simplest form, reparations can be defined as the provision of redress to victims of human rights abuses. Reparations can take many forms including rehabilitation; restitution; compensation; establishing the truth; the restoration of dignity; and improving the quality of life of those who have suffered harm. The guarantee of non-repetition has become increasingly important for those who have lived through successive periods of conflict. Reparations that strive to accomplish these objectives can be made through material or symbolic gestures, to individuals or collectively. While a number of principles on reparations have emerged from the work of Van Boven and Bassiouni as to what constitutes "reparations", the Commission considered these principles as "guides" in devising this reparations programme. The context and the economic reality that Sierra Leone finds itself in was a major factor that the Commission had to take into account.

Reference 361 - 0.01% Coverage

victims of gross violations of human rights and fundamental freedoms," Final report submitted by Special Rapporteur van Boven to the UN Commission on Human Rights on 2 July 1993 (E/CN.4/Sub.2/1993/8), page 16, paragraph 41.

Reference 362 - 0.01% Coverage

A person is a 'victim' where as a result of acts or omissions that constitute a violation of international human rights and humanitarian law norms, that person, individually or collectively, suffered harm, including physical or mental injury, emotional suffering, economic loss, or impairment of that person's fundamental legal rights. A 'victim' may also be a dependant or a member of the immediate family or household of the direct victim as well as a person who, in intervening to assist a victim or prevent the occurrence of further violations, has suffered physical, mental or economic harm.⁹

Reference 363 - 0.01% Coverage

Victims were subjected to various forms of human rights abuses. These abuses have left many of the victims in urgent need of assistance in order for them to continue with their lives. In thousands of statements, the victims, identified their needs to the Commission. In addition, the Commission conducted extensive research consulting a large number of international organizations and NGOs to assess the concrete needs of victims and how best they could be met. Consultations were also organised with various victim organisations, and they provided further insight into the measures that should be taken for their real needs to be addressed.

Reference 364 - 0.01% Coverage

Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and International Humanitarian Law, p. 6.

Reference 365 - 0.01% Coverage

The conflict caused many innocent people to fall victim to the cruellest violations of fundamental human rights. As a consequence, victims often find themselves in a condition which is not conducive to living with dignity. Most have been reduced to living in poverty, some having to endure the loss of limbs and others shunned because of their personal experiences such as rape and sexual slavery. Their dependency and social exclusion are constant reminders of the suffering they went through.

Reference 366 - 0.01% Coverage

Political Constraints: The Dilemma of New Democracies Confronting Past Human Rights Violations." 1992. 43 Hastings Law Journal, p. 1425 and 1433.

Reference 367 - 0.01% Coverage

The Commission determined the categories of beneficiaries who should benefit from the reparations programme by considering those victims who were particularly vulnerable to suffering human rights violations. Most Sierra Leoneans agree that amputees, war wounded, women who suffered sexual abuse, children and war widows would constitute special categories of victims who are in dire need of urgent care. The Commission also considered those victims who are in urgent need of a particular type of assistance to address their current needs, even if this only serves to put them on an equal footing with a larger category of victims. The reparations programme aims at contributing to the rehabilitation of those victims, even if complete rehabilitation is not possible.

Reference 368 - 0.01% Coverage

Based on the rationale described above, the Commission recommends the following groups of victims as beneficiaries of the specific measures of the reparations programme: (1) amputees; (2) other war wounded (defined under the section describing the various categories of beneficiaries); (3) children; and (4) victims of sexual violence. Due to their particular vulnerability either before or after the commission of the violation, many of the victims in each of these categories of beneficiaries suffered from multiple human rights violations. For example, a victim of sexual violence may also have been abducted, tortured, and abused or subjected to a variety of other types of inhumane acts.

Reference 369 - 0.01% Coverage

In addition to providing redress to the direct victims of human rights violations, the Commission wanted to address the needs of indirect victims as well. Indirect victims are defined as the dependents or relatives of the direct victim. The Commission decided to include war widows, those women whose husbands had died as a consequence of a human rights violation during the course of the war, as beneficiaries of specific measures of this reparations programme. For some of these war widows, their husbands were the breadwinners of the family. As a consequence of their husband's death, many of these women struggle to provide for themselves and their family. Recognising the difficulties they endure, recommendations for them in the reparations programme.

Reference 370 - 0.01% Coverage

The Commission determined that for certain benefits to be accorded to victims, the violation committed against the victim must constitute a 50% or more reduction in earning capacity. This can be the result of one injury or an aggregate of injuries that total or exceed the 50% benchmark. In making the decision to use the reduction of earning capacity as a cut-off point for some of the measures in the reparations programme, the Commission was influenced by the practices employed by the Inter-American Court for Human Rights and the German Holocaust reparations scheme.¹⁷ It is also important to note that while the Commission has chosen to employ this practice, it did not constitute a judgment on the harm suffered by a particular victim. The provision of benefits is not proportional to the harm suffered nor can the harm suffered by a victim be satisfactorily quantified.

Reference 371 - 0.01% Coverage

Symbolic reparations provide continued public acknowledgement of the past and address the demand and need on the part of victims for remembrance. Remembrance lies at the centre of a network of themes important to survivors of mass atrocity and human rights abuses, such as truth-seeking, prevention of future abuses, reconciliation, and reparations.

Reference 372 - 0.01% Coverage

Produced by the TRC Steering Committee with support from the International Human Rights Law Group

Reference 373 - 0.01% Coverage

Produced by the TRC Steering Committee with support from the International Human Rights Law Group

Reference 374 - 0.01% Coverage

On the other hand, albeit related, the widespread loss of confidence in the political elite and the patently fickle nature of Sierra Leonean politics have driven inordinately high numbers of talented Sierra Leoneans to abandon their country and seek opportunities abroad. These 'outward defections' testify to the hopelessness experienced by the majority under a government that sustains itself through corruption, nepotism and the plundering of state assets whilst paying no attention to the human rights of its citizens.

Reference 375 - 0.01% Coverage

The most important local antecedent in Pujehun, however, was the Ndorgboryosoi rebellion, which started in Soro Gbema Chiefdom shortly after the first one-party state election in 1982. The Mende word 'Ndorgboryosoi' carried powerful connotations of the involvement of forest spirits in protecting the local people from an enemy. In 1982, according to a Pujehun resident interviewed by the Commission,⁵⁵ the enemy was the APC state security apparatus and the rebellion was directed against dictatorship, a gross disregard for human rights and the brutalisation of the rural people by the SSD.

Reference 376 - 0.01% Coverage

Produced by the TRC Steering Committee with support from the International Human Rights Law Group

Reference 377 - 0.01% Coverage

Governance was clearly over-centralised during the regime of Siaka Stevens. Provincial and rural areas were left to their own devices and their inhabitants became disenchanted with the political system. In its submission to the TRC, the National Commission for Democracy and Human Rights (NCDHR) stated:

Reference 378 - 0.01% Coverage

See National Commission for Democracy and Human Rights (NCDHR), Submission to TRC Thematic Hearings on Governance and Human Rights, June 2003, at page 2. See also United Nations Development Programme (UNDP), Submission to TRC Thematic Hearings on the Causes of the Conflict, 7 May 2003, at page 2.

Reference 379 - 0.01% Coverage

The rule of law signifies a society in which law is supreme. The running of state institutions, the relationship between the rulers and the ruled, interactions amongst and between individuals or corporate bodies; they should all be done according to law. The rule of law opposes the arbitrary rule of powerful men and women. The basic principles of the rule of law include equality before the law of the land;⁶¹ an impartial and independent judiciary; an accessible justice system; irrevocable constitutional guarantees; and respect for human rights and fundamental freedoms.⁶² Other important components of the rule of law are due process and fair legislative mechanisms that do not discriminate against particular groups in the society.

Reference 380 - 0.01% Coverage

Human rights include the right to life, the right not to be subjected to torture or any form of cruel or inhuman treatment, the right not to be deprived of one's liberty arbitrarily, the right to a fair trial and the right to a private life. Fundamental freedoms include freedom of expression, freedom of religion and freedom of association.

Reference 381 - 0.01% Coverage

The legal profession contributed a great deal towards the massive abuse of human rights that took place before and during the war. Indeed the lawyers of today are just as responsible for the woeful state of human rights protection that persists in the country. It was not uncommon during the 1970s and 80s for members of the Sierra Leone Bar Association to act as spies for the regime of President Siaka Stevens.

Barristers leaked decisions by the Bar Association to government, thereby forestalling planned protests against oppressive and unconstitutional government actions.

Reference 382 - 0.01% Coverage

Radio and television broadcasting were monopolised by the tightly-controlled SLBS. There has never been a Freedom of Information Act in Sierra Leone and its absence allowed for much speculative journalism. People's freedom of speech was severely restricted by the tendency of the security forces to arrest people for what was known as 'careless talk' - essentially any criticism of the government. Newspapers that reported corruption or human rights violations were invariably admonished or attacked.⁷⁴

Reference 383 - 0.01% Coverage

This appalling situation was further compounded by the unprofessional behaviour of police officers in handling and investigating reports made by the public, which remained their core function. There was widespread extortion of complainants, taking of sides in disputes and daily violation of basic human rights, especially those of suspects. The violations included unlawful incarceration, brutal torture in order to extract 'confessions,' violent suppression of anti-government demonstrations and the lethargic failure of senior officers to investigate complaints made against the police. All these factors served to widen the already existing gulf between the public and the police.

Reference 384 - 0.01% Coverage

Produced by the TRC Steering Committee with support from the International Human Rights Law Group

Reference 385 - 0.01% Coverage

This chapter of the report is intended primarily to fulfil the obligation on the Commission to produce an 'impartial historical record' of the violations and abuses of human rights and international humanitarian law related to the conflict in Sierra Leone. It takes the form of a narrative that spans across more than two decades of political and military activities in the country, but places its main focus on the years from 1991 until 2002, when the country was embroiled in armed civil conflict and war-related violations and abuses were visited upon the population.

Reference 386 - 0.01% Coverage

In the realms of the media, The Tablet newspaper² acted as one of the few genuinely independent advocates for political change and for human rights. It provided a platform for the Labour Unions and student bodies to state their opinions freely and without prejudice, often exposing elements of the management of the state that made uncomfortable reading for the ruling party. After being subjected to continual harassment by Government supporters, the editor and journalists of The Tablet were ultimately deterred only by an attempted bombing of their offices and the unbearable threats to their lives. The newspaper petered out without a truly worthy replacement and the opinionmakers were driven underground or into exile.

Reference 387 - 0.01% Coverage

The interpretations and impact of Sierra Leonean involvement in the Liberian conflict can be distilled into two main points that are relevant to the causes of the conflict and the human rights violations that were to follow in Sierra Leone. The first point is that Sierra Leone's hosting of ECOMOG was interpreted by Charles Taylor as a legitimate ground for retaliation against the state. The second, partly connected point is that Taylor's war impacted profoundly on Sierra Leoneans living in Liberia, as they were deliberately targeted and maltreated by NPFL fighters.

Reference 388 - 0.01% Coverage

Yet by then there was already developing something of a two-way overlap between the conflict in Liberia and the conflict-to-come in Sierra Leone. For example, the Commission heard testimony that other Sierra Leonean commandos who subsequently attained prominence in the RUF fighting force had also first participated in the armed conflict in Liberia on the side of the NPFL; the names mentioned in this regard include Abu Kanu, Rashid Mansaray, Mohamed Tarawallie, Mike Lamin, Sam Bockarie (alias "Mosquito"), Patrick Lamin and Morris Kallon. In terms of high-level engagement, though, the Commission has been unable to adduce any evidence that suggests any of these men was especially influential or responsible for human rights violations in the NPFL. In any case none of them was a commander of requisite seniority to be directing operations by then.

Reference 389 - 0.01% Coverage

Thus, the earliest instances of human rights violations recorded by the Commission took place in 1990 and bear the character of cross-border raids from Liberia. Moreover, the first attackers who engaged the Sierra Leone Army were all combatants who had fought and were based in Liberia. Foday Sankoh's plans on when to launch his 'revolution' in Sierra Leone was affected by the Liberian conflict. Had the agenda that Sankoh formulated in Liberia been enacted in the manner and in accordance with the time-scale he had originally foreseen, the outcome of the revolution may have been different. Instead Sankoh, the self-styled master planner, was overtaken by events on the ground and prevailed upon by Charles Taylor.

Reference 390 - 0.01% Coverage

Immediately after their violent raid, which is reported to have lasted for about three hours, the NPFL attackers retreated back over the border into Liberian territory. The cruel irony of the event was that the contested motor vehicle that had apparently provoked the attack was left languishing in Bomaru and never collected. Anthony Meku-Nagbe's 'score' was settled nonetheless; in lieu of the pick-up truck, the NPFL commandos heavily looted Major Foday's house and drove away in the support vehicle that had been used to hurry to the scene by Lieutenant Kargbo. Anthony Meku-Nagbe came on a murderous mission "for the Major and not civilians"⁴²; in settling his 'score', he left numerous human rights violations, a shattered Bomaru community and a country fearing further pandemonium in his wake.

Reference 391 - 0.01% Coverage

Moreover a second, separate flank on the Kailahun Front had been opened when several further platoon-sized contingents re-entered Bomaru and its environs on 31 March 1991; many residents of Bomaru, scattered in panic at the original attack, had only just returned to the town when the new wave of insurgents arrived. This time the nearby village of Senga was also directly targeted. SLA soldiers inside and outside the towns were reported to have returned gunfire, but were hopelessly outnumbered and ill-equipped to resist. Baiwala and Mobai were then taken by the insurgents by 12 April 1991, each of them

experiencing similar patterns of human rights violations at the hands of Liberian fighters speaking in Gio, Mano and Pelleh languages.

Reference 392 - 0.01% Coverage

Liberians were reputed to enjoy living in groups, although one could surmise that the desire to be with the group was directly related to the need for security. They had not set up defences around their group assembly points but rather carried out human rights violations in groups, including cannibalism and rape.

Reference 393 - 0.01% Coverage

One of the strategic objectives of the RUF was the crippling of commercial and industrial activities. The short term consequence of this was that it destroyed the revenue base of the government. In the long term however, it was to make reconstruction more difficult for the country. The strategy at the heart of RUF guerrilla warfare was therefore one of incremental territorial expansion and ever-increasing material and psychological yields. In each operational area, the RUF commandos deployed at the front were instructed to build up gradually from small-scale attacks, limited in scope, to larger strikes intended to have national or international impact by sabotaging the Government's primary military or economic interests and robbing civilians of any chance of a life free of fear and human rights abuse.

Reference 394 - 0.01% Coverage

dress in the full camouflage uniforms and other insignia of the SLA and often adopting troop formations or positions of deployment that were used by the SLA. In these instances, the RUF commandos not only violated the laws of war pertaining to combatant identification, but also systematically flouted human rights and humanitarian law norms in their acts of targeting civilian areas, destroying and plundering properties and carrying out mass killings.

Reference 395 - 0.01% Coverage

Phase II was also the period in which one of the RUF's most notorious future military leaders, Sam Bockarie (alias "Mosquito"), rose to prominence as both a Battlefield Commander of lethal prowess and a deviant unknown quality who would frequently disobey orders and commit human rights abuses with total abandon. Bockarie was in some quarters considered to be a henchman for Foday Sankoh; explicit in the testimony of at least two fellow vanguards was the suggestion that when Sankoh wanted somebody to carry out his "dirty work" he would look to Mosquito.

Reference 396 - 0.01% Coverage

In the recurring accounts of 'hit and run' attacks about which the Commission received testimonies, violations and abuses appeared to follow two principle sub-patterns within the operation. First, the 'hit' intended, in its conception at least, to entail a targeted assault on an installation of military or strategic importance. The targeting, however, became gradually less discriminate as the guerrilla campaign broadened and it transpired to inflict gross human rights violations on numerous civilian communities. Violations typically included killings on sight, detentions of civilians (often en masse in cramped conditions), beatings of captives and incidents of rape and gang rape.

Reference 397 - 0.01% Coverage

In Pujehun District, the fighters who were affiliated to the RUF in Phase I had always subscribed had a very limited local objective to their participation in the conflict. While the vanguards and early batches of junior commandos were set on the propagation of 'Sankoh's revolution', the militiamen of the 'Action Group' styled themselves more as 'defenders of the people' against the proGovernment forces of the Army and ULIMO. It was always likely to be a confusing dichotomy for the military properly to understand. In trying to decipher the blurred lines between civil defence and rebellion, the Army often got it wrong and ended up targeting innocent civilians. Local people started to see the soldiers as the most likely abusers of their human rights, whereas the various squads of local militiamen fighting under the umbrella of the RUF were, conversely, a source of protection.

Reference 398 - 0.01% Coverage

There are good grounds on which to conclude that the Sierra Leone Army engaged in vindictive targeting of purported 'rebels' and 'collaborators' in the first two phases of the conflict, and that numerous violations of human rights also stemmed from their ragged and undisciplined deployment, compounded by massive fear, lack of training and an enemy whose war tactics were designed specifically to exploit such weaknesses. Many soldiers also saw the war as an opportunity for personal profit and engaged in reprehensible conduct

Reference 399 - 0.01% Coverage

It is untrue, however, to infer that Maada Bio's relatives stayed with the RUF of their own free will: all of them suffered horrendous abuses of their human rights and were forced to remain in the personal dominion of the RUF leader, Foday Sankoh. Elizabeth Bio, herself a victim of continual sexual violence, explained part of the harrowing ordeal as follows:

Reference 400 - 0.01% Coverage

565. However, in the case of the Kamajors, 'initiation' was co-opted by a cadre of individuals who were morally and spiritually corrupt. The evidence adduced by the Commission, as described below, indicates that the 'initiators' of the Kamajors wrested a notion of empowerment from dignified beginnings and turned it into a vehicle for their own material enrichment and the abuse of the human rights of others.

Reference 401 - 0.01% Coverage

Having constructed an elaborate electoral process including adopting a constitution that disallowed anyone below 40 years from contesting for the president, the motivations behind Strasser's designs to continue in power as an elected civilian president are unclear. At the outset of their government, the NPRC had stated that it would hand over after four years. The Government had courted and recruited Sierra Leoneans in the diaspora who could assist it with organising a transparent election. It also set up a number of important institutions such as the National Commission for Democracy and Human Rights, as bulwarks for strengthening democracy in the country. His Vice Chairman, Maada Bio had travelled extensively within the sub region understudying other experiences in arranging transitions from military to civil rule. There was therefore so much expectation riding on a successful transition.

Reference 402 - 0.01% Coverage

It is accordingly of immense significance that the paradigm for peace opted for under the Lomé Accord was one centred on power sharing. This route was the only one available for compromise between the two sides since none of them had the capacity for an all out victory to bring the war to an end. The mantra of the RUF that it was a revolutionary movement had become totally rejected by this time and sounded hollow even to its members, many of who didn't even know what the movement stood for. Terror became its chief weapon in fighting for power. The restored SLPP government in attempting to consolidate its rule and defeat the RUF and the AFRC, promoted a civil militia that engaged in gross abuses and violations of human rights and international humanitarian law, to which the government turned a blind eye.

Reference 403 - 0.01% Coverage

Johnny Paul Koroma, Former Head of State as Chairman of the AFRC and latterly Chairman of the Commission for the Consolidation of Peace (CCP); interview conducted by a television journalist from Oxygen Media, on behalf of New-York based human rights group WITNESS; recorded on DVCAM (Tape R2003-0543) in Freetown; 5 November 2001.

Reference 404 - 0.01% Coverage

journalist from Oxygen Media, on behalf of New-York based human rights group WITNESS; recorded on DVCAM (Tape R2003-0543) in Freetown; 5 November 2001.

Reference 405 - 0.01% Coverage

The Initiators and their apprentices brought the whole concept of civil defence into disrepute. Collectively, under the direction and following the example of their High Priest, they extorted and exploited the membership of the Kamajor movement in a seemingly insatiable pursuit of their own self-enrichment. Moreover, Initiators were responsible both directly and indirectly for the commission of human rights violations on an alarming scale, particularly in the South and East of Sierra Leone. For every death that took place during an initiation ceremony in the country, of which the Commission has recorded multiple cases but suspects the number to be much higher, the Initiators bear the responsibility.

Reference 406 - 0.01% Coverage

The Commission sees a fundamental contradiction at the heart of some of the explanations tendered by members of the War Council. There were grave organisational flaws in the structure of the Civil Defence Forces of which each of these men was a senior executive member. Many of these deficiencies in fact relate to a lack of coherent leadership, a dearth of sensible co-ordination, a disjunction between the initiating cadre and the administrative cadre and an incessant problem in exerting effective control over the rank and file, or the masses. Whilst the Commission recognises that with hindsight members of the War Council might see such shortcomings as anomalous and even comical, it remains the case that there are very serious issues intertwined within them that ought to have been resolved at the level of the War Council. The Commission finds that the senior citizens of the Kamajors were hapless and hopeless in the paramount task of living up to their responsibilities. They did nothing to prevent the mayhem that unfolded around them; in fact they lent legitimacy and their implicit endorsement to the acts of atrocity that were taking place by staying in a movement that had become a systematic violator of human rights.

Reference 407 - 0.01% Coverage

The five Districts of the Northern Province,⁴²² as well as Kono District in the North-East, became hosts to the overwhelming majority of the ousted AFRC dissidents. Thousands of junta soldiers, as well as a considerable proportion of the fighting forces of the RUF, flooded into the North on their mass retreat from power. The AFRC and RUF factions, both separately and in tandem with one another, visited a sustained and unprecedented level of human rights abuse on the populace of the North and North-East in the year 1998.

Reference 408 - 0.01% Coverage

Hence some of those who suffered beatings, detention and other human rights abuses at the hands of fellow civilians and the state squarely attributed their own suffering to the fact that their local rivals or civic enemies had fabricated some allegations about their connections with the AFRC regime. Donald Smith, a Freetown resident who was detained for some 16 months without charge by the SLPP Government, described in detail to the Commission the part played by 98.1 FM in instigating the targeting of his life and property as a 'collaborator':

Reference 409 - 0.01% Coverage

In his testimony before the Commission's public hearings, Dr. Julius Spencer acknowledged that he received complaints that people were being killed as a result of comments aired on the radio station. Spencer notified the President of his intention to stop the broadcasts, but according to him he was instructed to continue.⁴³⁴ In the light of this testimony, the Government was aware of the impact of such broadcasts as potential catalysts for violent attacks on the persons they named. Yet the President refused to countenance the proposal to abate the broadcasts. Instead, by ordering their continuation, the President effectively encouraged mob justice and the attendant abuses of human rights.

Reference 410 - 0.01% Coverage

"[The conditions were] abysmal, awful, hopeless, useless, degrading, wretched, oppressive, abhorrent and all such vices most inhumane. I and many others were selectively tortured. Pademba Road prisons were designed for about four hundred inmates. The period following the restoration of the Kabba government in 1998 saw an unprecedented large number of children of all ages stuffed into very untidy cells at Pademba Road. Whilst I and many others were charged for treason, the bulk of our unfortunate compatriots were dying by the hour in the cells at Pademba Road prisons. Our human rights were grossly abused."⁴⁵¹

Reference 411 - 0.01% Coverage

The conditions of detention at Pademba Road Prison in the period between February 1998 and 6th January 1999 were deplorable and in breach of multiple provisions of both the Sierra Leone Constitution and applicable human rights instruments including the ACHPR and the ICCPR. These conditions had existed right from the APC regime and had changed little during the intervening years.

Reference 412 - 0.01% Coverage

The first batch of accused, comprising twenty-one detainees, appeared in Magistrate Court Number One on 30 March 1998. Among those appearing were Sheku Bayoh, a former secretary to several civilian and

military heads of state; Umaru Deen-Sesay, Secretary of State for Sports and one-time captain of the national football squad; Victor Brandon, Secretary of State for Development and Economic Planning; Hassan Barrie, a former engineer with the National Power Authority; Dennis Kamara, who was Deputy Head of Immigration before the coup; Mohammad Bangura, Commissioner for Tourism and later Secretary of State for Information, and former President of the National League for Human Rights and Democracy; Gipu Felix George, head of SLBS under the junta and a former freelance consultant to UNICEF; Dennis Smith, a former SLBS director; Olivia Mensah, a SLBS reporter; Maada Maka Swaray, a former SLBS reporter; William Smith of the newspaper We Yone; Dalinda Lebby; C.P.O. Samuel Sanpha "Major" Sesay, who was head of immigration under the AFRC; Claude Campbell, a lawyer and former attorneygeneral under the NPRC; Steve Bio, an arms dealer, relative of former NPRC leader Brigadier Julius Maada Bio, and associate of RUF leader Corporal Foday Sankoh; and Gibril Massaquoi, Sankoh's former spokesman. Bio and Massaquoi were arrested by the military junta in November on charges of plotting to overthrow the AFRC. Broadcaster Hilton Fyle's name was read out in court, but he was not present at the hearing.⁴⁶⁰ No charges were read at the hearing, and the proceedings were adjourned until April 6. On 6th

Reference 413 - 0.01% Coverage

According to Victor Foh, first accused in the first treason court, by promulgation of this notice and the rule of evidence, 'our human rights were grossly abused and those of us charged to court were robbed of our constitutional right of fair hearing.⁴⁶³ According to Abdulai Conteh, such fundamental change regarding the unanimity rule of the jury's verdict, must be brought about by an Act of Parliament and not 'emergency regulations and their exigencies'.⁴⁶⁴ Rules four, five and six of this notice unfairly prejudiced the trials of the accused persons by robbing them of their rights to fair hearing.⁴⁶⁵

Reference 414 - 0.01% Coverage

"The trials were a callous display of injustice and gross disregard for human rights. Untenable as the case of the prosecution was callously and without regard for judicial precedence and the law a verdict of guilty was recklessly handed down to our lot. Even before the trial, senior members of the Kabbah government made pronouncements that we were to be sent to the gallows because according to them we did not like the Kabbah government. ... and those of us charged to court (three treason courts and one court martial) were robbed of our constitutional rights of fair hearing by the promulgation of public notice No. 4 of 1998 issued on 9th

Reference 415 - 0.01% Coverage

Appeals for clemency were made by the international community and human rights organizations to President Kabbah, the only person who can grant clemency after confirmation of the sentences. The international human rights monitoring group Human Rights Watch released an open letter to President Kabbah on Friday calling on him to commute the death sentences of 34 soldiers accused of treason.

Reference 416 - 0.01% Coverage

1016. The military assault on the capital city, Freetown, quickly evolved into one of the most concentrated spates of human rights abuse and atrocities against civilians perpetrated by any group or groups during the entire history of the conflict. For over two weeks the populace of Freetown and its environs, among which were living thousands of displaced persons from the rest of the country, was subjected indiscriminately to a gamut of different crimes against their persons and destruction of their property.

Reference 417 - 0.01% Coverage

1117. The Districts of Kono, Koinadugu, Tonkolili and Bombali constituted the control area of General Issa Sesay, the movement's second most senior commander. In land mass, Sesay's area represented approximately one third of the territory of Sierra Leone, including almost all its Northern infrastructure. Sesay was deputised by two further senior vanguard commanders, Brigadier Morris Kallon and Colonel Augustine Bao. Kallon's reputation as a wanton abuser of human rights preceded him into the peace process; Bao had also garnered a fearsome edge for himself during his tight grip on power as the RUF's Chief of Security.

Reference 418 - 0.01% Coverage

1236. The first human rights violations that were discernibly targeted against a Freetown-based member of the RUF took place in the evening of Saturday 6 May 2000. These violations were levelled against the Deputy Minister for Labour, Industrial Relations and Social Security, Idrissa Hamid Kamara (alias "Leather Boot"). Leather Boot would later explain to the police how he came to learn of the disturbing incident at his official residence:

Reference 419 - 0.01% Coverage

Johnny Paul Koroma, Former Head of State as Chairman of the AFRC and latterly Chairman of the Commission for the Consolidation of Peace (CCP); interview conducted by a television journalist from Oxygen Media, on behalf of New-York based human rights group WITNESS; recorded on DVCAM (Tape Ref. R2003-0543) in Freetown; 5 November 2001.

Reference 420 - 0.01% Coverage

1273. The Commission is moved to express its deep concerns about the manner in which these arrests were carried out. There is absolutely no evidence that the Constitution of Sierra Leone was adhered to in respect of the procedures that ought to be followed when depriving a person of his liberty;⁷²⁶ indeed, the arrests and subsequent detentions flouted several constitutional guarantees and represent grave breaches of the human rights of these men.

Reference 421 - 0.01% Coverage

See the Constitution of Sierra Leone (Act No. 6 of 1991), at Chapter III – The Recognition and Protection of the Fundamental Human Rights and Freedoms of the Individual; Section 17 – Protection from arbitrary arrest or detention.

Reference 422 - 0.01% Coverage

Johnny Paul Koroma, Former Head of State as Chairman of the AFRC and latterly Chairman of the Commission for the Consolidation of Peace (CCP); interview conducted by a television journalist from Oxygen Media, on behalf of New-York based human rights group WITNESS; recorded on DVCAM (Tape R2003-0543) in Freetown; 5 November 2001.

Reference 423 - 0.01% Coverage

1284. The Commission has ascertained that at least nine of the men arrested on 7 May 2000 remain in detention at Pademba Road Prison to the present day.⁷⁴¹ On the other hand, an unspecified number of them have been arbitrarily released, either as individuals or in groups.⁷⁴² Mike Lamin was released on 5 September 2001, apparently after a consultative process that involved officials from the Human Rights Section of UNAMSIL.⁷⁴³ There appear to have been no justifications given for the distinctions made between the men detained and the men released, particularly not on grounds of law.⁷⁴⁴

Reference 424 - 0.01% Coverage

TRC Confidential Interview with a member of the UNAMSIL Human Rights Section; interview

Reference 425 - 0.01% Coverage

Jackson Swarray (alias CO 'Wray') was mentioned in a number of statements received by the Commission as a wanton violator of human rights. His brutish behaviour extended to the rape and abduction of young girls, at least one of whom he forced to be his 'bush wife'; forcing children to carry loads on threats of death; and carving the initials 'RUF' into the chests of abductees. See, inter alia, TRC Confidential statements numbered 5906 and 5985 relating to Wray's activities in the Koinadugu District.

Reference 426 - 0.01% Coverage

1395. The intervention of the Kamajors helped to prevent the RUF from harming any more civilian demonstrators. However, the Kamajors themselves committed further violations and abuses, including civilian killings. Thus the Commission finds that the Kamajors were a further scourge to human rights during the landmark events of 8 May 2000.

Reference 427 - 0.01% Coverage

1433. The Commission holds the RUF as a faction responsible for the shootings of members of the demonstrating crowd and, as far as they killed or wounded unarmed civilians, for the human rights violations they represent. The Commission however cautions against the hasty categorisation of all those persons killed or wounded into one group, for example by describing them all as 'civilians' or 'peaceful demonstrators'.

Reference 428 - 0.01% Coverage

1435. The Commission notes again that among the deceased and the wounded there were those who carried weapons⁸⁹⁵ and who therefore fall to be classified as combatants. The combatants among the crowd by their actions precipitated armed defensive action on the part of the RUF guards. These combatants bear a share of the responsibility in precipitating the human rights violations against others that stemmed from the armed defensive action.

Reference 429 - 0.01% Coverage

1480. No explanation of the reasons for arrest was given to any one of the prisoners with whom the Commission spoke, either among those who have subsequently been released or among those who remain imprisoned. Nor was the legal basis for the arrests made clear. The only possible legal correlation

is that the arrests were carried out on the orders of the President and the State's intention was that they should be justified under the Public Emergency Regulations 1998. Once again, therefore, the arrests and subsequent detentions in 'safe custody' constituted multiple denials of the captives' human rights and flagrant abuses of executive power.

Reference 430 - 0.01% Coverage

1482. Tellingly, the majority of those arrested in May 2000 remain in the custody of the state to the present day. Four years have passed since their arrests. None of them has been afforded a fair trial. According to interviews, none of them has yet been properly charged with any offence before a magistrate of the criminal courts in an open and transparent hearing. The continued detention of these persons in relation to the conflict in Sierra Leone is tantamount to a continuation of the conflict. It is corrosive to the prospect of national reconciliation. For every day that passes, the violation of their human rights is further entrenched. The Commission finds that each of these persons is presently and continuously being denied justice by this Government of Sierra Leone.

Reference 431 - 0.01% Coverage

Additionally, many of those arrested and detained during the month of May 2000 have been subjected to torture and inhuman and degrading treatment during their time in state custody. The Commission has conducted hours of interviews with present and former prisoners at Freetown Central Prison, Pademba Road. The following account is a conglomeration of several individual testimonies that provide a comprehensive overview of the plight of RUF detainees, as well as a damning indictment of the human rights record of the present Sierra Leone Government:933

Reference 432 - 0.01% Coverage

Any time we have been visited by [human rights] NGOs, we put our problems to them as to how the Government has been violating our fundamental human rights. According to Human Rights Watch, Amnesty International and other NGOs, they have taken up our case with the Government on so many occasions and have appealed for us to be set free, but to no avail. The message always returned that this SLPP Government is very difficult to deal with and formidable when it comes to RUF matters."

Reference 433 - 0.01% Coverage

Detainees have been beaten with weapons, assaulted and routinely subjected to excessive force. Detainees have had their mouths taped and their heads forcibly 'bagged' in executioners' bags. Detainees have been denied their human rights with regard to their conditions of detention. Protracted periods of solitary confinement and transfers to alternative detention facilities in undisclosed locations have been imposed on many of them. The Government is responsible for this litany of human rights violations against detainees presently in its custody. The Government is also responsible for the deaths of at least 21 RUF prisoners in state custody.

Reference 434 - 0.01% Coverage

1485. The Commission stands opposed to all forms of human rights abuse, irrespective of the identities of those responsible for them or those against whom they are carried out. Above any other principle, it opposes human rights abuse that endures to the present day.

Reference 435 - 0.01% Coverage

1493. The Government of Sierra Leone has been uncooperative and unhelpful to the Commission in its efforts to establish the full extent of human rights abuses that persist in the justice system to the present day. Some requests by the Commission to the Prisons Department were met with petty obstructionism. What were described as 'comprehensive' lists of detainees provided to the Commission were flawed and incomplete. Justice in Sierra Leone must not only be done; it must be seen to be done.

Reference 436 - 0.01% Coverage

[...] It is very disheartening to spare the 'heads' of an institution and hold onto its 'tail'. In May 2000, almost all Ministers of the RUF and the other original vanguards who took decisions were rounded up by the Government and kept in jail. The snag now is that the Government has released the ringleaders of the RUF, especially the top cadres of the late Foday Sankoh like Mike Lamin, Eldred Collins and Peter Vandy, yet they continue to hold onto the inferior members or subordinates... These are all indications of the abuse and violations of the fundamental human rights of the members so affected in prison. There is no country in the whole world where peace, love and unity shall hold firmly without equal rights and justice."936

Reference 437 - 0.01% Coverage

Produced by the TRC Steering Committee with support from the International Human Rights Law Group

Reference 438 - 0.01% Coverage

The nature of the conflict is better understood in terms of its complexities and ambiguities than through the lens of any single, defining cause of ill intent. What this chapter shows is the multiplicity of causes and effects that permeate the violations and abuses of human rights and international humanitarian law as well as the institutional fluidity of the violators themselves.

Reference 439 - 0.01% Coverage

The violation categories used by the Commission are the violations known to have occurred frequently during the conflict in Sierra Leone. These are quite different from those that occurred during outbreaks of mass human rights abuse in other conflicts and countries. By using these common violations, the Commission hopes to comprehensively describe the common experiences of the Sierra Leonean people during the conflict.

Reference 440 - 0.01% Coverage

Although fighters of the NPFL did not appear to unite themselves behind a common command structure with the 'vanguards' or the junior forces of the RUF/SL movement, they appear to have identified themselves as RUF 'revolutionaries' in the communities they entered. Accordingly, they were perceived by most of those they encountered to be part and parcel of the same, single movement headed by Foday Sankoh; in the recording of human rights abuses by the TRC, victims of abuses in Kailahun District that appear in fact to have been committed by NPFL fighters were widely, if not universally, attributed to the RUF.

Reference 441 - 0.01% Coverage

240. AWOL's story might initially seem somewhat incongruous with the military and political history of the conflict in Sierra Leone that was to unfold three years later. He never took part in that conflict, nor has he, to the Commission's knowledge, since perpetrated any human rights abuse against others. Upon closer inspection, though, his story is instructive in understanding the nature of the violations committed in the conflict in Sierra Leone. The Revolutionary United Front of Sierra Leone (RUF/SL) is behind the majority of violations and abuses committed during the conflict.¹³⁸ Yet behind the majority of RUF/SL combatants in the conflict is a story of deception and forced recruitment. In turn, behind every forced recruit, including those who did not become combatants is a story of victimisation.

Reference 442 - 0.01% Coverage

Hence the RUF ranks began to fill up not only with forced conscripts, but also increasingly with a potentially uncontrollable number of 'bogus revolutionaries', who had no interest in common objectives, seeking only the power of the gun to act out their suppressed feelings of rage and revenge, usually against innocent civilians from their own or other communities. This category of persons was obviously prone to human rights abuses, but was also highly dangerous to the RUF movement itself, since they were effectively beyond discipline and could be just as likely to turn their guns on fellow RUF members.

Reference 443 - 0.01% Coverage

own analysis regarding the possibility of violations and abuses of human rights taking place within secret societies in peace-time Sierra Leone, precisely because of the de facto detachment of these groups from the militias and armed factions that prosecuted the war. The role that such belief systems play in society in general was perceived to have been of greater relevance to the reconciliation component of the Commission's work; hence the production of the internal research paper entitled: Traditional Belief Systems and Customs of Ethnic Groups and their implications for

Reference 444 - 0.01% Coverage

The CDF had been very popular as a concept. It would have been logical to assume that its leadership at the communities would derive from an amalgam of all the groups and interests present in the communities. Many middle class persons and members of the political elite supported the movement in various ways. Yet it's fighting forces and the administrative arm were led by people with very basic education or none at all. Lacking knowledge of human rights principles or the laws of armed conflict, it is not surprising that brazenness and arbitrariness subordinated common sense and intellect in decision making within the movement.

Reference 445 - 0.01% Coverage

It is easier to understand the motivations of those who engaged in a just war, to resist the enslavement of their people. However, the Commission is unable to understand or justify the whole scale condemnation of the civil populace as collaborators or supporters of the RUF by those who claimed to be liberating them from the RUF scourge. How else should the Commission interpret the indiscriminate attacks on people by the CDF? Despite the achievements of the CDF in the conflict, Sierra Leoneans must feel terribly disappointed and let down by the CDF record on human rights. Sierra Leoneans gave all their possessions

denying themselves even basic services to feed and cloth their assumed liberators. Indeed, the thought must be shocking to them that between the CDF and the RUF, the difference on respect for people's human rights is marginal.

Reference 446 - 0.01% Coverage

Throughout the first two phases of the conflict, the groups responsible for the highest number of violations were the RUF and to a lesser extent, the SLA. The RUF is responsible for 13,657 or 74.6% of the 18,308 documented human rights violations while the SLA accounted for 2,025 or 11% of the violations.

Reference 447 - 0.01% Coverage

'rebel'. The remainder were accused of being either 'rebel' collaborators or members of a family containing a 'rebel'. This is consistent with the argument that elements within the ECOMOG force targeted and summarily executed suspected rebels and collaborators. Regardless of the veracity of the allegation – or indeed the 'guilt' or 'innocence' of the supposed collaborator – such executions constitute a breach of international human rights law.

Reference 448 - 0.01% Coverage

The method of killing was, primarily, execution by shooting at short range. The deaths mainly occurred in public places and were witnessed by civilians. The public nature of the violation suggests that it may have been intended as a warning to others. In some cases the victims were first abducted from their home or workplace and brought to the point of execution.¹⁸⁹ Summary executions constitute serious violations of international human rights law. They amount to arbitrary deprivation of life, which is prohibited by the major human rights treaties. In addition, they constitute serious violations of international humanitarian law. For example, Common article 3 to the Geneva Conventions, which applies specifically to non international armed conflict, prohibits the

Reference 449 - 0.01% Coverage

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Reference 451 - 0.01% Coverage

involvement in Sierra Leone's war remained insignificant, mainly taking the form of international diplomacy and the occasional condemnation of human rights violations and abuses taking place in the country.

Reference 452 - 0.01% Coverage

In November 1997, the British Prime Minister, Tony Blair, invited President Kabbah to attend the Commonwealth summit in Edinburgh as his personal guest. President Kabbah was given the opportunity to put across the problem of Sierra Leone to the summit. The summit condemned the military dictatorship

in Nigeria and its abysmal human rights credentials, but noted “the positive contribution the country was making through ECOWAS in support of democratic government in the region”. The summit also condemned the military junta in Sierra Leone and called for the reinstatement of Kabbah’s government. It suspended Sierra Leone from participating in the councils of the Commonwealth and Peter Penfold, British High Commissioner to Sierra Leone, went with Kabbah and his cabinet to Guinea to demonstrate the determination of the British government to support democracy in Sierra Leone. The British government also provided £250,000 to Kabbah and his cabinet while they were in exile in Guinea. These funds were used to run the government-in-exile. The British government also funded the setting up of Radio 98.1 FM. The radio station was an effective propaganda machine used by the government against the military junta.

Reference 453 - 0.01% Coverage

Although Liberia, Burkina Faso and Libya constituted a network of support for the RUF, they did not share the same motivations. Ideology accounted for Libya’s involvement in the Sierra Leone conflict. Libya wanted a revolutionary regime in Sierra Leone but the RUF lacked the necessary organisational cohesion and revolutionary discipline. Many commentators have described Sierra Leone’s civil war as one of the most brutish and deadliest wars in recent times. The RUF has been credited as one of the primary violators of human rights in Sierra Leone.⁹⁰ As the civil war unfolded these facts could not have been unknown to Libya. The regime in Burkina Faso claimed to be revolutionary. It would seem that the strong relations between Burkina Faso and Libya resulted in Burkina Faso’s involvement in the Sierra Leone conflict as an ‘errand boy’ for Libya. Individual Burkinabes also benefited from the arms and diamonds trade.

Reference 454 - 0.01% Coverage

See the multiple reports produced by international NGOs documenting the human rights abuses carried out by the RUF; for example, both Amnesty International (www.amnesty.org) and Human Rights Watch (www.hrw.org) maintain web archives of their reports on Sierra Leone.

Reference 455 - 0.01% Coverage

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Reference 456 - 0.01% Coverage

Statistics pertaining to the numbers of women affected by the conflict in Sierra Leone remain a huge concern. In 2003, Human Rights Watch published a report in which they stated that as many as 275,000 women and girls may have been sexually violated during the war.¹

Reference 457 - 0.01% Coverage

See Human Rights Watch, “We’ll Kill You if you Cry”, a report on gender-based violence during the conflict in Sierra Leone, Vol. 95, No. 1(a), New York, January 2003 (hereinafter “Human Rights Watch, We’ll Kill You if you Cry”). The full report is available at the website: www.hrw.org.

Reference 458 - 0.01% Coverage

Amongst all ethnic groups in Sierra Leone, it is accepted practice for husbands to chastise or beat their wives or female relatives. Under customary law, a husband has the right to “reasonably chastise his wife by physical force”.⁵³ Tellingly, significant numbers of women believe that it is appropriate for men to beat their wives. During a study of gender-based violence by the NGO Physicians for Human Rights, more than half of the women interviewed agreed with the view that a man has the right to beat his wife.⁵⁴

Reference 459 - 0.01% Coverage

See Physicians for Human Rights; “War-Related Sexual Violence in Sierra Leone: A populationbased survey”; report produced by an NGO based in Washington, DC, January 2002 (hereinafter “Physicians for Human Rights, War-Related Sexual Violence in Sierra Leone”), at page 9. The report sampled 1,048 households in three IDP camps and one community with a large number of IDPs. A total of 991 female heads of household participated in the study.

Reference 460 - 0.01% Coverage

Section 15 of the Constitution provides for a bill of rights guaranteeing fundamental human rights and freedoms of the individual irrespective of sex.⁶⁹ This provision represents an important guarantee and should, appropriately understood, be a basis for challenging laws that discriminate against women.

Reference 461 - 0.01% Coverage

The Constitution of Sierra Leone 1991, at Section 15, provides as follows: “Whereas every person in Sierra Leone is entitled to the fundamental human rights and freedom of the individual, that is to say has the rights, whatever his race, tribe, place of origin, political opinion, colour, creed, or sex, but subject to respect for the rights and freedom of others and for the public interest, to each and all of the following: (a) life, liberty, security of person, the enjoyment of property, and the protection of the law; (b) freedom of conscience, of expression and of assembly and association; (c) respect for private and family life; and (d) protection from deprivation of property without compensation; the subsequent provision of this Chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others, or the public interest.”

Reference 462 - 0.01% Coverage

Land ownership in the Western Area is based on English property laws from prior to 1925 and allows for individual ownership. In the Provinces, land ownership is governed by Chiefdom Councils and allows only for group ownership. Equal land ownership and inheritance laws and practices are necessary to achieve sustained development in any country. In post-war Sierra Leone, they are also essential for women’s economic, social and political survival.⁷⁷ The argument for land ownership for women is not only one based on personal need, family security or national development; it is also a question of basic human rights.⁷⁸ Women can acquire land through purchase, but often lack resources to do so. Most landowners acquire land through inheritance, and because of discrimination in the laws of inheritance that apply throughout the country, far fewer women than men own land in Sierra Leone.

Reference 463 - 0.01% Coverage

There are frequent reports in Sierra Leone of violence that has resulted in death, permanent disability or serious injuries to women. In each such case, the woman's right to health, liberty and security of person, as well as her right to physical integrity, are severely undermined. In a case where a woman dies as a result of physical injury inflicted by her partner, despite having made multiple reports to the police, the Government should be held accountable for having breached its duty of care to protect its citizens' human rights.

Reference 464 - 0.01% Coverage

The horrific and brutal experiences of women during the war make it necessary to examine whether the laws of Sierra Leone offer adequate protection in relation to sexual and gender-based violence. In 2001, Physicians for Human Rights (PHR) conducted a population-based assessment of the prevalence and impact of sexual violence and other human rights abuses among internally displaced persons in Sierra Leone. PHR found that internally displaced women and girls in Sierra Leone suffered an extraordinary level of rape, sexual violence and other gross human rights violations during the country's civil war, with half of them indicating that their contact had been with the Revolutionary United Front (RUF) forces.⁹⁵

Reference 465 - 0.01% Coverage

See Physicians for Human Rights, War-Related Sexual Violence in Sierra Leone.

Reference 466 - 0.01% Coverage

See Coalition on Women's Human Rights in Conflict Situations; Submission to the TRC Special Thematic Hearings on Women; Freetown, June 2003 (hereinafter "Coalition on Women's Human Rights submission to TRC"), at page 7.

Reference 467 - 0.01% Coverage

152. On 23 February 2003 the Sierra Leone Parliament established a Standing Committee for Human Rights and related issues to promote respect for human rights in Sierra Leone. If this Committee is to succeed in its mandate, it will have to pioneer and lobby for legal reform to promote and protect women's rights. A relevant consideration in its work must be the application of national law to sexual violations that may occur in a future conflict situation.

Reference 468 - 0.01% Coverage

The ratification and incorporation of international human rights instruments into national law is crucial to the advancement of women's rights as it imposes on states an obligation to interpret national law in a manner consistent with the state's international or legal obligations. International human rights standards can be regarded as the minimum standards of protection, which all systems of national laws should strive to attain.

Reference 469 - 0.01% Coverage

Sierra Leone became a member of the United Nations in 1961 and ratified most of the major human rights instruments. Sierra Leone is a signatory to the International Covenant on Civil and Political Rights (ICCPR),¹⁰³ the International Covenant on Economic Cultural and Social Rights (ICECSR),¹⁰⁴ the

Convention on the Elimination of All forms of Discrimination Against Women (CEDAW),¹⁰⁵ the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),¹⁰⁶ the Convention of the Rights of the Child (CRC),¹⁰⁷ the African Charter on Human and People's Rights¹⁰⁸ and the African Charter on the Rights and Welfare of the Child.¹⁰⁹

Reference 470 - 0.01% Coverage

The Universal Declaration of Human Rights recognises the right to life liberty and security¹¹⁰; the right to be free from sex discrimination;¹¹¹ the right to marry and found a family; equal rights for women as to marriage, during marriage and at its dissolution;¹¹²

Reference 471 - 0.01% Coverage

See the Universal Declaration Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948) (hereinafter "UDHR"), at Article 3. See UDHR, at Article 2. See UDHR, at Article 16(1). See UDHR, at Article 5. See UDHR, at Article 16(1).

Reference 472 - 0.01% Coverage

Article 1 of CEDAW defines "discrimination against women " to "mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field".

Reference 473 - 0.01% Coverage

There are several international instruments that seek to protect the rights of women and prohibit violence particularly during armed conflicts.¹³⁸ The use of national, regional and international human rights mechanisms in responding to the egregious crimes and horrific events that occurred in Sierra Leone during the war has significantly developed international human rights law and continues to do so. Sierra Leone is a party to the four Geneva Conventions of 1949 and to their Additional Protocols. Common Article 3, which applies to all parties in internal conflicts such as Sierra Leone's, prohibits violence against life and the person, in particular murders of all kinds, mutilation, cruel treatment and torture and outrages upon personal dignity such as humiliating and degrading treatment.¹³⁹ Additional Protocol I, which regulates international armed conflict, specifies: "women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault".¹⁴⁰

Reference 474 - 0.01% Coverage

See, inter alia, the following instruments and declarations prohibiting violence and promoting justice for victims of crime: Women and Armed Conflict 1995, Beijing +5 (2000); Declaration on the Protection of Women and Children in Emergency and Armed Conflict (1976); Declaration of Basic Principles of Justice for Victims of crime and Abuse of Power G.A.40/34 (1985); Fourth World Conference on Women: Women and conflict (1985); Security Council Resolution 1325 (2000); and the Commission on Human Rights, Basic Principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law, published as

Reference 475 - 0.01% Coverage

See Physicians for Human Rights, War-Related Sexual Violence in Sierra Leone, at page 84. See Additional Protocol I to the Geneva Conventions, at Article 76(1). More detail can be found in Physicians for Human Rights, War-Related Sexual Violence in Sierra Leone. See Additional Protocol II to the Geneva Conventions, at Article 4(2)(a).

Reference 476 - 0.01% Coverage

in Physicians for Human Rights, War-Related Sexual Violence in Sierra Leone. Vol Three B Chapter Three Women and the Armed Conflict in Sierra Leone

Reference 477 - 0.01% Coverage

The 1993 World Conference on Human Rights in Vienna recognised violence against women as an issue of priority and noted the need to end impunity for sexual violence in war and conflict. The ad hoc Tribunals have contributed substantially to the development of jurisprudence on rape and sexual violence culminating in the codification of sexual and gender based crimes in the Rome Statute of the International Criminal Court providing the basis for examining and prosecuting these crimes as international crimes today.

143 Most of this section has been taken from the Coalition on Women's Human Rights submission to the TRC, which to a large extent is based on the findings of the report by Human Rights Watch, We'll Kill You if you Cry, from page 35 onwards.

Reference 478 - 0.01% Coverage

Preliminary Report submitted by the U.N. Special Rapporteur on Violence Against Women, Its Causes and Consequences, Commission on Human Rights, Fiftieth Session, November 1994, U.N. Document E/CN.419995/42,p.64

Reference 479 - 0.01% Coverage

See the Declaration and Programme of Action, U.N World Conference on Human Rights, adopted in Vienna on 25 June 1993, A/Conf.157/23.

Reference 480 - 0.01% Coverage

Rape and other forms of sexual violence also constitute torture under international human rights and humanitarian law. This is not only clear from other horrific examples provided heretofore, but it has been recognised explicitly in the ICTY and ICTR decisions as well as the Rome Statute, as discussed above. Most recently the Kunarac Appeal Chambers made clear that the severity of pain and suffering inflicted by rape constitutes torture. It should be noted that, despite error in an early ICTY opinion, there is no longer any requirement [as is required in human rights law] that the person committing the torture have official status when the torture is committed in the framework of war crimes or crimes against humanity.

Reference 481 - 0.01% Coverage

Enslavement is named as a crime against humanity (Art. 7(1)(c) Rome Statute and Art. 2(c) Special Court Statute). It is also prohibited by numerous international human rights and humanitarian law instruments and is one of the original universally condemned crimes under customary international law. Enslavement is also a jus cogens violation.¹⁷⁹ The sexual form of enslavement is now codified as “sexual slavery”. Beyond that enslavement takes many forms, some of them gendered. Young girls and boys, men and women can be enslaved in one of many ways: in domestic labour, mining, arms factory, demining and medical experiments. It becomes a gender crime when an individual is enslaved because of his or her particular function in the society: women used for domestic labour (cooking, washing, cleaning, and serving, educating children), men for transport or fighting, young girls for spying, girls and women for sex and reproduction.

Reference 482 - 0.01% Coverage

Internally Displaced Persons (IDPs) are persons or groups of persons who have been forced or obliged to flee or leave their homes or places of habitual residence, in particular as a result of, or in order to avoid the effects of, armed conflict, situations of generalised violence, violations of human rights, or natural or human made disasters, and who have not crossed an internationally recognised State border.²¹⁸ Issues raised by internal displacement are the duty of the state to protect those displaced. Armed groups also have the legal and moral responsibility not to assault civilians or subject them to human rights abuses and to protect the rights of displaced persons living in areas under their control.

Reference 483 - 0.01% Coverage

Acts of torture, carried out on a systematic scale, are regarded as both a crime against humanity and a war crime. The requirements though are different. The right not to be tortured is one of the fundamental rights of a non-derogable nature, in other words it is a jus cogens norm. Rape and other forms of sexual violence are recognised both under international human rights law and humanitarian law as torture. Women experienced intense mental and physical torture in the hands of the armed forces, particularly the RUF. The intention was to strip them of any sense of identity or self worth. They were treated like animals with the clear purpose of dehumanising them. Cruel and degrading treatment was extensively practiced on women and girls. A girl-child who lived with the RUF described some sordid acts she witnessed:

Reference 484 - 0.01% Coverage

The Commission finds that all of the armed perpetrator forces pursued a deliberate policy of killing civilians, often in an indiscriminate fashion. In the course of pursuing this policy, the factions took the lives of many women and girls. The Commission finds that the RUF in particular pursued a strategy of mass killings under campaigns such as “Operation No Living Thing”. In terms of both international human rights law and humanitarian law, the killing of civilians is strictly prohibited.

Reference 485 - 0.01% Coverage

See Physicians for Human Rights, War-Related Sexual Violence in Sierra Leone. See also Human Rights Watch, We'll Kill You if you Cry. See also Mansaray, Binta; “The Invisible Human Rights Abuses in Sierra Leone”; Freetown, June 2002. See also Federation of African Media Women; “The Girl Child during the Civil War in Sierra Leone”; Freetown, October, 2002. Theresa Blackie, TRC statement, Bo Kakua, 16 December 2002. See the Statistical Report produced as an Appendix to this report.

Reference 486 - 0.01% Coverage

319. Women were forced to watch helplessly as their children and husbands, suffered human rights violations, which in many instances led to their death.³²¹ Many women became victims of violations while trying to protect their children. An example was given by this woman, who became an amputee through trying to protect her child:

Reference 487 - 0.01% Coverage

It is also important to note that the major armed groups in the conflict, fighting both for and against the government, all committed gross human rights violations against women. In essence, the conflict did not offer any respite for the women from any of the armed groups, including those who were fighting for the government and who were supposed to protect civilians. On the side of government, the fluctuating nature and loyalties of the national Army that gave rise to the “sobel” phenomenon³²⁶ meant that the government lost any substantial control of the Army and as such forfeited a mechanism through which to protect all civilians, women included. Therefore, women were rendered vulnerable to attacks and abuses without any reliable institution of state to turn to for their protection.

Reference 488 - 0.01% Coverage

The NGO Physicians for Human Rights has reported that, during their survey of a sample population of survivors of sexual violence, 34 out of 94 survivors believed that the commander of the person who attacked them had knowledge that they were to be attacked.³³⁵

Reference 489 - 0.01% Coverage

Human Rights Watch in its report notes that the RUF made occasional efforts to declare rape a crime in certain areas under its control and in a few incidents even endeavoured to punish “ordinary combatants” who had contravened orders to this effect.³³⁶ The Commission has also gathered testimony from witnesses who indicated that some commanders prohibited rape and sexual violence against women, particular where the abductee was very young.³³⁷

Reference 490 - 0.01% Coverage

See Physicians for Human Rights, War-Related Sexual Violence in Sierra Leone, at page 54. See Human Rights Watch, We’ll Kill You if you Cry, at page 46.

Reference 491 - 0.01% Coverage

At different times in the conflict, the RUF and other factions carried out specific military operations against civilians, which invariably resulted in widespread human rights violations. The objectives of these operations on occasion specifically included looting. In particular, the campaign of attacks known as “Operation Pay Yourself” resulted in large scale looting by RUF and AFRC combatants eager to gain a personal dividend from their participation in the war. A female health worker who was working with MSF at Kenema in 1997 described how her possessions were looted by members of the AFRC junta:

Reference 492 - 0.01% Coverage

394. Women involved in the conflict as perpetrators also committed notable human rights violations. Female commanders were often given appellations that characterised the forms of behaviour for which they were notorious: Adama "Cut Hand"; Lieutenant "Cause Trouble"; Kumba "Blood"; Lady "Jungle Law"; and Hawa "Two Barrel", for example. Killing, maiming, looting, burning and amputations were among the violations attributed to females in the TRC database. One female perpetrator gave the following personal testimony:

Reference 493 - 0.01% Coverage

The question of "survival" also profoundly motivated and influenced women perpetrators in their involvement in gross human rights violations. Engaging in acts of violence provided women with a guarantee of security and survival from their own colleagues.⁴⁰¹ Women had to prove themselves to their peers, as well as their individual commanders, by carrying out violations without flinching or displaying any outward signs of weakness.

Reference 494 - 0.01% Coverage

After the invasion of Freetown in January 1999, women also participated in the National Consultative Conference convened by the National Commission for Democracy and Human Rights (NCDHR), headed by Dr. Kadie Sesay. The conference was charged with collating civil society's views on the peace talks due to take place in Lomé later that year.⁴¹³

Reference 495 - 0.01% Coverage

The Kamajors did not initially allow its members to harm women, children and unarmed civilians.⁴²³ However as the conflict progressed and less attention was paid to initiating new recruits in an ethical manner, previous undertakings were disregarded and the Kamajors also committed human rights violations against women and children. The conflict has had the effect of eroding the traditional conception of hunters' societies, thus resulting in the denigration of the original Kamajor society. A much-venerated cultural institution has been tarnished by the malicious and manipulative acts of the CDF leadership, especially its initiating cadre, during the course of the conflict.

Reference 496 - 0.01% Coverage

☒The International Human Rights Law Group in its current "Access to Justice" programme in Kono, Koinadugu and Kailahun continues to inform the populace on the laws of Sierra Leone in an effort to bring justice close to the people.

Reference 497 - 0.01% Coverage

The Commission believes that an opportunity exists in this transitional period to address the plight of women and girls at the highest levels. For example, giving effect to the provisions of CEDAW and to other international human rights instruments, which provide inspiration and the impetus to improve the quality of life for women and children, would be a tremendously symbolic step.

Reference 498 - 0.01% Coverage

Produced by the TRC Steering Committee with support from the International Human Rights Law Group

Reference 499 - 0.01% Coverage

This chapter will examine the traditional place of children in Sierra Leone and explore their status before and since the war in all the major spheres that affect them, such as education and health, as well as economic, legal and socio-cultural issues. A brief overview of the national and international human rights instruments impacting on and protecting children's rights is included. More importantly, the chapter will also attempt to convey the impact of the armed conflict on children, as well as their diverse experiences within the various armed groups, in the terms that children testified about them to the TRC. The status of children since the conflict will also be described, together with interventionary measures taken by both state and non-state actors in attempting to respond to their needs. The chapter will also highlight the Commission's main findings and recommendations on children.¹¹

Reference 500 - 0.01% Coverage

Children in Sierra Leone did not fully enjoy their basic human rights even before the war broke out. The breakdown of democratic institutions, the collapse of the rule of law and the mismanagement of the country's resources impacted on the rights of the children of Sierra Leone. Laws relating to children were outdated, uninformed and grossly inadequate to guarantee the protection and promotion of their rights. Crimes against children including rape and sexual violence generally went unpunished, further contributing to the culture of silence and impunity that prevailed.

Reference 501 - 0.01% Coverage

The use of regional and international human rights mechanisms in responding to the egregious crimes that occurred in Sierra Leone during the last decade is significant to the development of international human rights law. Sierra Leone became a member of the United Nations in 1961 and is a signatory to most of the major human rights instruments including the International Covenant on Civil and Political Rights (ICCPR),²⁴ the International Covenant on Economic Cultural and Social Rights (ICECSR),²⁵ the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW),²⁶ the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),²⁷ the Convention of the Rights of the Child (CRC),²⁸ the African Charter on Human and People's Rights²⁹ and the African Charter on the Rights and Welfare of the Child.³⁰

Reference 502 - 0.01% Coverage

International Instruments, and or declarations prohibiting violence and promoting justice for victims of crime include: the Declaration on the Protection of Women and Children in Emergency and Armed Conflict (1976); the Declaration of Basic Principles of Justice for Victims of crime and Abuse of Power G.A.40/34 (1985); and the Commission on Human Rights Basic Principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and

Reference 503 - 0.01% Coverage

Children in Sierra Leone suffered immeasurably during the eleven-year conflict that engulfed the country. The conflict was characterised by wanton destruction, loss of life and massive violations of human rights. The violence was pervasive, with children of all ages throughout the country suffering horrible and

unimaginable atrocities. The levels of violations endured throughout the conflict period. A 15-year-old girl testified to the Commission during closed hearings in Freetown of the following acts:

Reference 504 - 0.01% Coverage

Submissions to the Commission confirm that the majority of human rights violations committed against children during the conflict took place under circumstances where the perpetrators had absolute control over their victims and had them totally at their mercy.⁸⁷ While these violations were mainly meted out against children by their adult captors, in many instances the violations were carried out by children themselves against friends and family members. The conflict was responsible for producing child perpetrators. One of the horrors of the conflict took place in Pujehun in 1991, when pupils of St. Paul's Secondary School, who had been abducted and drugged, were forced to slaughter their own parents.⁸⁸

Reference 505 - 0.01% Coverage

During the conflict, all of the armed factions, including the pro-government forces, committed gross human rights violations against children. In its submission, UNICEF noted that:

Reference 506 - 0.01% Coverage

Children witnessed the perpetration of violations during the conflict and in turn perpetrated gross human rights violations against others. Initially, they had to be coerced into committing abuses but soon many of them began to initiate heinous atrocities without having to be compelled to do so. After being absorbed into an armed faction, children often behaved absolutely without inhibition. Living in the violent reality of conflict soon deadened their senses, which were already impaired by continued drug abuse.

Reference 507 - 0.01% Coverage

Child perpetrators carried out many of the same human rights violations to which they themselves had been subjected. They committed violations including killing, abduction, amputation, mutilation, extortion, looting and destruction, rape and sexual violence, abduction and forced recruitment, forced displacement, forced detention, assault, torture, beating and forced labour.

Reference 508 - 0.01% Coverage

By all accounts, elevation within the RUF from the rank of ordinary member to an SBU Commander was based mostly on account of being recognised as a "ruthless fighter", or in the jargon of the RUF "a wild boy or hard boy."²¹³ In reality this recognition signalled the ability to commit human rights violations with complete abandonment. When asked the conditions for appointing a child as an SBU Commander, an erstwhile member of the RUF delicately described it as depending on when the child became:

Reference 509 - 0.01% Coverage

The Commission finds that all of the armed factions deliberately pursued a policy of forcibly administering drugs to children in order to loosen their inhibitions, spur them on to commit gross human rights violations and to participate in the conflict without fear. The Commission finds further that many of the children committed the most heinous violations while under the influence of drugs. The Commission finds that none of the armed factions has acknowledged the widespread use of drugs, nor expressed any

remorse for the long-term consequences of prolonged drug abuse on individuals and on the future prospects of the country as a whole.

Reference 510 - 0.01% Coverage

"The extent of the damage has yet to be assessed. When we speak of children and the impact of such violations upon them, we cannot talk only of statistics or of apparent physical consequences. We talk about attempts at destroying the very humanity that these children have been born with. We talk about not only violating their rights as enshrined in international law, but about denying them the very right to exist as what they are – children. We have an obligation to protect them against future brutality, to protect their basic human rights, and if at all possible, to bring back their hope in a better future."²⁷⁵

Reference 511 - 0.01% Coverage

Refugee camps are often squalid and inmates face severe deprivation. In this environment, children are most at risk to disease, hunger and human rights violations. In the camps children often suffer malnutrition and diseases such as scurvy, beriberi and pellagra. All of these factors contribute to high mortality rates.²⁸³ While no statistics are available as to how many children died during the conflict as a result of malnutrition, the UN Human Development Index has ranked Sierra Leone consistently in last place over recent years, particularly with regard to its infant and under-five mortality rates.

Reference 512 - 0.01% Coverage

Thus in 1998, UNICEF supported 54 agencies to form the Child Rights Violations Network to monitor, document and advocate against continuing human rights violations against Sierra Leone's children.³⁷⁰

Reference 513 - 0.01% Coverage

UNICEF has also instigated vital interventions in the area of education in response to the desperate state of education in the country after the conflict. In 2000, UNICEF partnered with the government and the Norwegian Refugee Council to establish the Rapid Response Education Programme, composed of special classes on numeracy and literacy skills, with additional teaching in peace building, human rights, religion and moral ethics. The programme was designed to enable children to make the adjustment back into formal classes. It typically focussed on IDP settlements and communities that had just become accessible to human assistance, lasting for an intense period of six months.

Reference 514 - 0.01% Coverage

Recognising that children might be traumatised due to their experiences during the war and would therefore be ill-prepared for immediate formal schooling, the CREPS programme included in its curriculum such topics as psychosocial and health issues, including trauma healing, peace education, human rights, gender issues and HIV / AIDS.³⁹⁰

Reference 515 - 0.01% Coverage

Produced by the TRC Steering Committee with support from the International Human Rights Law Group

Reference 516 - 0.01% Coverage

In the conflict, youths were both victims and perpetrators of human rights violations on a massive scale. It was a dual role to which youths had become accustomed in post-independence Sierra Leone: on the one hand, they were abused; on the other hand they became the abusers. In the 1970s and 1980s, as the one-party system became increasingly tyrannical, youths formed the only viable opposition to the ruling All People's Congress (APC) because the other political parties had been co-opted and assimilated into the government.² When institutions and their leaders in so many sectors of society failed to speak out against the injustices of the APC regime, invariably it was the voice of youth that called for accountability. Conversely, though, youths were often the instruments of oppression, acting as vicious thugs to influence the outcomes of elections and put down anti-government demonstrations. In times of transition, Sierra Leone's youth has always struggled to find its rightful place in society.

Reference 517 - 0.01% Coverage

Many NGOs working with youth have specific aims and objectives (such as human rights, skills training and empowerment), but they all share a common goal – to transform youths into capable members of society. NGOs serving youths, however, must overcome a variety of obstacles in carrying out their work, including the perennial issue of resource shortages. Most NGOs access funds for programme implementation from donors outside of Sierra Leone. They have not been able to generate funds locally. Donor support in turn is inherently erratic. Donor priorities may change before the programme goals for youth work are met, leading to the abrupt end of the programmes.

Reference 518 - 0.01% Coverage

Hitherto mainstream youths – university students and graduates – were increasingly marginalised amidst the deteriorating political and economic environment of the 1970s. These youths linked up with the marginalised uneducated and unemployed youth, bringing with them ideas of “revolution” as a means of ending their marginal existence. Once the armed struggle had commenced many youths exploited the conflict for private gain. The war provided a useful cover for them to enrich themselves. Their looting campaigns made no distinction between private and public property, nor did their violence distinguish between combatants and ordinary civilians. As a result massive human rights violations and abuses were perpetrated by youths during the war.

Reference 519 - 0.01% Coverage

Produced by the TRC Steering Committee with support from the International Human Rights Law Group

Reference 520 - 0.01% Coverage

The signatories to the 1999 Lomé Peace Agreement agreed to amnesty in order to secure the peace. It was accepted, at the time of the signing of the Lomé Peace Agreement, that the RUF would not have signed the agreement if there had been any prospect of legal action being taken against its members.³ A truth and reconciliation process was seen as an alternative mechanism for accountability. The Commission was viewed as a means to address impunity so that violations and abuses of human rights would not simply be forgotten. Through its creation of an “impartial historical record” and its holding of public hearings and ceremonies, the Commission would promote a sense of restorative justice in Sierra Leone.

Reference 521 - 0.01% Coverage

Accordingly, those who argue that peace cannot be bartered in exchange for justice, under any circumstances, must be prepared to justify the likely prolongation of an armed conflict. Amnesties may be undesirable in many cases. Indeed, there are examples of abusive amnesties proclaimed by dictators in the dying days of tyrannical regimes. The Commission also recognises the principle that it is generally desirable to prosecute perpetrators of serious human rights abuses, particularly when they ascend to the level of gravity of crimes against humanity. However, amnesties should not be excluded entirely from the mechanisms available to those attempting to negotiate a cessation of hostilities after periods of brutal armed conflict.

Reference 522 - 0.01% Coverage

The mandate of the Commission refers to “violations and abuses of human rights and international humanitarian law related to the armed conflict in Sierra Leone”. The Truth and Reconciliation Act of 2000 encouraged the Commission to look abroad. Section 6(2)(a) of the Act enjoined the Commission to investigate “the role of both internal and external factors in the conflict”. The Commission had to inquire into whether the conflict was “the result of deliberate planning, policy or authorisation by any government” (*italics added*).²⁰

Reference 523 - 0.01% Coverage

The Truth and Reconciliation Act 2000 refers in several places to “victims and perpetrators”, suggesting that these two groups make up the Commission’s principal constituency. Special attention is focussed on children, including child combatants, as well as victims of sexual abuse.²⁹ The Commission is also given a role in determining responsibilities, in identifying the “causes”³⁰ and the “parties responsible”,³¹ and in assessing the parts played by “any government, group or individual”.³² At the core of the Commission’s mandate is the concept of “violations and abuses of human rights and international humanitarian law”.

Reference 524 - 0.01% Coverage

external actors and the occurrence of crucial military and political events outside Sierra Leone. More detail and analysis on these dimensions can be found in the chapter on the Military and Political History of the Conflict in Volume Three A and the chapter on External Actors in Volume Three B of this report. On the role of foreign forces in Sierra Leone see, for example: “Guinean Forces Kill, Wound Civilians in Sierra Leone”, Human Rights Watch Press release, 28 February 2001.

Reference 525 - 0.01% Coverage

The Commission was charged with examining “violations and abuses of human rights and international humanitarian law”. It was mandated to “create an impartial historical record” of such violations and abuses³⁷ and to “investigate and report on the causes, nature and extent” of the violations and abuses.³⁸ The Truth and Reconciliation Commission Act 2000 provides no further guidance on the scope of the terms “human rights” and “international humanitarian law”.

Reference 526 - 0.01% Coverage

In November 2000, an international workshop held in Freetown and organised by the Office of the High Commissioner for Human Rights (OHCHR) and the United Nations Assistance Mission in Sierra Leone

(UNAMSIL) had proposed the establishment of a consultative process "to work out the relationship between the TRC and the Special Court".⁴⁵ During 2001, the Secretary-General reported that UNAMSIL and the OHCHR would be preparing "general guidelines" for the relationship between the Commission and the Special Court.⁴⁶ In December 2001, as part of its activities to prepare for the establishment of the TRC, the OHCHR and the Office for Legal Affairs convened an expert meeting in New York. The meeting was described as follows in the report of the OHCHR:

Reference 527 - 0.01% Coverage

In addition to these United Nations-sponsored meetings, some international NGOs, including Human Rights Watch and the International Centre for Transitional Justice, developed proposals on the underlying principles and the type of provisions that might merit consideration in a relationship agreement.⁴⁸ While there was some rumination in these proposals over the possibilities of joint or common efforts in the areas of witness protection, translation and public awareness, most of the reflection on how the two bodies might co-operate tended to dwell on what was called "information sharing". From the outset, information sharing was seen as a "difficult issue". Interestingly, none of the expert meetings or discussion papers appears to have anticipated what would eventually become the main difficulty in the relationship between the two bodies, namely a request by a person accused and detained by the Special Court to testify before the Truth and Reconciliation Commission.

Reference 528 - 0.01% Coverage

See Human Rights Watch, Policy Paper on the Inter-relationship Between the Sierra Leone Special Court and the Truth and Reconciliation Commission, 18 April 2002; at www.hrw.org. See also International Centre for Transitional Justice, Exploring the Relationship Between the Special Court and the Truth and Reconciliation Commission, 24 June 2002; available at www.ictj.org.

Reference 529 - 0.01% Coverage

More specifically, there is considerable precedent to be drawn from other truth and reconciliation commissions. In the South African Commission, both "awaiting-trial" and convicted prisoners appeared before hearings of the Human Rights Violations Committee in order to supply their versions of events. Prisoners and detainees also appeared before the Amnesty Committee of the South African Commission for purposes of having their amnesty applications heard. Indeed some prisoners and detainees appeared before both Committees. The Sierra Leone TRC was entrusted by the Parliament of Sierra Leone with the responsibility of hearing all relevant evidence and information concerning its mandate. Had Chief Hinga Norman or the other detainees been in prison in Sierra Leone awaiting trial before a national court, there can be no doubt that arrangements would have been made to have enabled them to be heard by the Commission. The TRC succeeded in gaining access to several persons held in Freetown Central Prison in exactly this situation.

Reference 530 - 0.01% Coverage

The Commission never heard from the office of Mr. Doss again, notwithstanding telephone calls to his office. Informally, the Commission was advised that the request had been referred to the UN Office of Legal Affairs at its Secretariat in New York. This office apparently supplied an opinion in which two propositions were made: that the Special Court held "primacy" over the Commission; and that no mediation could take place without the involvement of the Special Court. The point on primacy

represented a misreading of the Special Court statute. With regard to the second point the writer of the opinion appeared to overlook the fact that the Commission had requested the SRSG to secure the participation of the Special Court in the mediation. While the Commission was generally disappointed with the failure of the UN structure to act expeditiously, the Commission wishes to recognise the constructive support provided on this issue by individual staff members of the Human Rights Section at UNAMSIL.

Reference 531 - 0.01% Coverage

The Commission submitted that the Court ought to be the guardian not only of the right to a fair trial, but also of other human rights, including freedom of expression. In the Sierra Leone context, there was an additional factor to consider, namely the right of Chief Hinga Norman, a prominent Sierra Leonean, to speak in a public forum before the TRC, to present his version of and perspectives on a critical period in the country's history. It was submitted that any objection to the TRC's request would have to strike a balance, weighing the effects of banning Chief Hinga Norman from speaking against the damage done to his freedom of expression and his right to appear publicly before the TRC. No such proportional assessment was undertaken by the Prosecution.

Reference 532 - 0.01% Coverage

Numerous other central role players in the conflict had been afforded their rights of testifying publicly before the Commission. Since there were examples of individuals¹¹⁷ in "comparable situations" to that of Chief Hinga Norman who had been granted the opportunity of a public hearing, the denial of an equal opportunity to Chief Hinga Norman in the absence of clear, substantial and reasonable grounds would constitute discrimination against him. It was contended that the harmful effects of a ban on Chief Hinga Norman from exercising his statutory and human rights far outweighed the speculative concerns raised by the Prosecution.

Reference 533 - 0.01% Coverage

"In the light of developments in post-conflict societies in the late 20th and early 21st centuries in dealing with past human rights violations, there exists on the part of victims a right to know the truth. Truth Commissions have been created in several countries around the world to meet that recognised obligation. There is considerable weight to the argument that establishing the "truth" is an essential component of the universally recognised "right to an effective remedy." The Special Court is duly bound to consider such a right in respect of the Sierra Leone population in its determination of the parameters of this request "in the interests of justice".¹¹⁸

Reference 534 - 0.01% Coverage

Awaiting trial prisoners in South Africa appeared before the Human Rights Violations Committee of the South African TRC on a routine basis. The Sierra Leone TRC had extensive contact with awaiting trial prisoners at Pademba Road, including the holding of a public hearing.

Reference 535 - 0.01% Coverage

See the Decision of Judge Robertson on Appeal, 28 November 2003, at paragraph 2. Particular reference is made here to the Human Rights Violations Committee of the South African

Reference 536 - 0.01% Coverage

In the light of developments in post-conflict societies in the late twentieth and early twenty-first centuries in dealing with past human rights violations, there exists on the part of victims a right to know the truth. Truth Commissions have been established in several countries around the world to meet this recognised obligation. The Commission finds that there is considerable weight to the argument that establishing the "truth" is an essential component of the universally recognised "right to an effective remedy".

Reference 537 - 0.01% Coverage

The Commission also recognises that victims have a right to justice and to pursue this right through legal means. The reaching of justice is not always possible in societies devastated by years of civil strife. Most post-conflict societies do not have the capacity to deliver justice on war crimes or serious violations of human rights, let alone the capacity to attend to daily justice needs. In future post-conflict transitional justice arrangements the international community and national governments should seriously consider a major investment in the national justice systems of such societies. Such investment may take place in addition to or in the alternative to establishing international tribunals to investigate and prosecute violations of human rights. This option would be better suited to strengthening domestic skills and capacity. It would have a potentially lasting impact on local justice institutions.

Reference 538 - 0.01% Coverage

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Reference 539 - 0.01% Coverage

The manner in which reconciliation should be facilitated has been the subject of much discourse throughout the TRC process. The Commission took the view that reconciliation has many components: national reconciliation; community reconciliation; and reconciliation between individuals, such as between victims and perpetrators at an inter-personal level. The Commission felt strongly that national reconciliation is a political process that begins with the negotiation of a cessation of hostilities and then leads to a peace process. A decisive move away from war is an important first step in the reconciliation process. Instituting measures that lead to democracy, establishing democratic institutions, building a culture of human rights and re-establishing the rule of law constitute steps that facilitate and deepen reconciliation at a political and national level. National reconciliation creates a context within which community reconciliation and individual reconciliation flourish.

Reference 540 - 0.01% Coverage

During the Interim phase of the Commission, the Office of the High Commissioner for Human Rights (OHCHR) contracted a local organisation, Manifesto 99, to conduct research on traditional methods of conflict resolution and reconciliation in Sierra Leone. While the report did not address all the issues the TRC had to deal with, it nonetheless provided a basis for the Commission's reconciliation policy. It covered the views of four ethnic groups on traditional practices on how to deal with conflict and reconciliation in relation to murder, burglary, arson, land, marital conflict, assault and injury.

Reference 541 - 0.01% Coverage

However, in some instances, the mechanisms in place are in conflict with a culture of human rights and perpetuate a culture of violence. For instance, in the case of robbery, groups like the Mende, Kono, and Sherbro will dress the perpetrator in rags, molest him or her and compel the person to dance around the village. The perpetrator is often beaten up. However respectful of tradition the TRC wishes to be, the use of violence cannot be condoned or encouraged.

Reference 542 - 0.01% Coverage

See Manifesto '99, Traditional Methods of Conflict Management and Resolution, study report submitted to the Office of the United Nations High Commissioner for Human Rights in support of the preparatory phase of the TRC, July 2002 (hereinafter "Manifesto '99, Traditional Methods of Conflict Management and Resolution"), at page 66. The research quoted here was taken from the following study: Shaw, R.; Remembering to Forget – "Report on local techniques of Healing and Reconciliation for Child Ex-combatants in Northern Sierra Leone", Tufts University, USA, October 2002 (hereinafter "Shaw, Remembering to Forget"), at page 9.

Reference 543 - 0.01% Coverage

a. All statement-takers received training on gender-based violence, child development, human rights, trauma and the symptoms of trauma, as well as training on how to take statements from vulnerable groups such as victims of torture, victims of sexual violence and children. Statement-takers were also trained on how to interview ex-combatants and perpetrators without being judgmental.

Reference 544 - 0.01% Coverage

Victims often expressed their discontent over the implementation of government-led initiatives, such as the DDR programme, for offering inordinate levels of reintegration assistance to perpetrators. As a result of human rights violations committed against victims, many are in urgent need of assistance. Reparations for these victims would serve as the catalyst to help restore the relationship between victims and perpetrators. It would contribute to the sustainability of reconciliation between victims and perpetrators.

Reference 545 - 0.01% Coverage

In the process of reconciling the various individuals, groups, communities, government, etc., it is important continuously to promote a culture of good governance. This includes: respect for the principles of human rights; regular free and fair elections; freedom of expression; the fight against corruption; decentralisation; equitable distribution of facilities and resources; and a well functioning judiciary. These issues have been listed by most of the consulted organisations and stakeholders as some of the major antecedents and factors responsible for the conflict in Sierra Leone. Today, bad governance is still perceived as an obstacle to reconciliation.

Reference 546 - 0.01% Coverage

human rights officer for UNAMSIL, based in Koidu Town.

Reference 547 - 0.01% Coverage

The National Vision for Sierra Leone has gathered increasing momentum nationally and internationally as a nation-building programme. It has attracted the attention of representatives from different sectors of society including human rights activists, politicians, representatives of arts and culture, government, the business community and people in the provinces. Its diverse appeal lies in the fact that it is a peoples' project, not a political project. Moreover it is not time bound.

Reference 548 - 0.01% Coverage

In order to realise the four activities described above, the Commission recommends that the National Vision fall under the wing of the TRC's successor body, the proposed National Human Rights Commission (HRC); or alternatively that the National Vision work in close collaboration with the HRC. Pending the formation of the HRC, the Commission recommends that civil society and government commit to keep the National Vision alive and establish a provisional vehicle or structure under which its activities can continue.

South Africa TRC Report-FULL> - § 1723 references coded [3.14% Coverage]

Reference 1 - 0.01% Coverage

Amnesty Committee 267 Human Rights Violations Committee..... 277 Reparation and Rehabilitation Committee.. 285

Reference 2 - 0.01% Coverage

11 The third point I would like to make concerns lustration - the disqualification or removal from public office of people who have been implicated in violations of human rights. The Commission considered this question carefully and finally decided not to recommend that this step be pursued. It is suggested, however, that when making appointments and recommendations, political parties and the state should take into consideration the disclosures made in the course of the Commission's work.

Reference 3 - 0.01% Coverage

20 We could not make the journey from a past marked by conflict, injustice, oppression, and exploitation to a new and democratic dispensation characterised by a culture of respect for human rights without coming face to face with our recent history. No one has disputed that. The differences of opinion have been about how we should deal with that past; how we should go about coming to terms with it.

21 There were those who believed that we should follow the post World War II example of putting those guilty of gross violations of human rights on trial as the allies did at Nuremberg. In South Africa, where we had a military stalemate, that was clearly an impossible option. Neither side in the struggle (the state nor the liberation movements) had defeated the other and hence nobody was in a position to enforce so-called victor's justice.

Reference 4 - 0.01% Coverage

25 In his judgement in the case brought by AZAPO and others against the Truth and Reconciliation Commission, Judge Mahomed, then Deputy President of the Constitutional Court and now our Chief Justice, quoted Judge Marvin Frankel. In his book, *Out of the Shadows of the Night: The Struggle for International Human Rights*, Judge Frankel wrote:

The call to punish human rights criminals can present complex and agonising problems that have no single or simple solution. While the debate over the Nuremberg trials still goes on, that episode - trials of war criminals of a defeated nation - was simplicity itself as compared to the subtle and dangerous issues that can divide a country when it undertakes to punish its own violators.

A nation divided during a repressive regime does not emerge suddenly united when the time of repression has passed. The human rights criminals are fellow citizens, living alongside everyone else, and they may be very powerful and dangerous. If the army and police have been the agencies of terror, the soldiers and the cops aren't going to turn overnight into paragons of respect for human rights. Their numbers and their expert management of deadly weapons remain significant facts of life.... The soldiers and police may be biding their time, waiting and conspiring to return to power. They may be seeking to keep or win sympathisers in the population at large. If they are treated too harshly - or if the net of punishment is cast too widely - there may be a backlash that plays into their hands. But their victims cannot simply forgive and forget.

Reference 5 - 0.01% Coverage

28 In our case, dealing with the past means knowing what happened. Who ordered that this person should be killed? Why did this gross violation of human rights take place? We also need to know about the past so that we can renew our resolve and commitment that never again will such violations take place. We need to know about the past in order to establish a culture of respect for human rights. It is only by accounting for the past that we can become accountable for the future.

Reference 6 - 0.01% Coverage

42 We have been accused, too, of an ANC bias for refusing to hold public hearings over the gross violations that allegedly took place in the ANC camps in Angola. The fact is that a few people did come forward to testify at human rights violations hearings about what they say happened to them in Quatro. Indeed, one of these people testified when President Mandela was visiting the Commission to attend a hearing in Gauteng. He had to sit through a tirade against the ANC. Had we been ANC lackeys, is it not likely that I would have stopped this witness to spare the ANC President this embarrassment?

Reference 7 - 0.01% Coverage

constitutes a gross violation of human rights makes no moral distinc-

Reference 8 - 0.01% Coverage

62 Mercifully the international community, and not just the Communist bloc, has already declared apartheid to be a crime against humanity. For the international community, indeed, this is no longer a point of debate. The world Christian community has declared that the theological justification of apartheid is a heresy. Closer to home, the Nederduitse Gereformeerde Kerk has said that apartheid is a sin. Some of the most senior judges in our country - who could not by any reasonable person be described as demagogues or lackeys of the ANC - have called apartheid a gross violation of human rights. Thus, the Truth and Reconciliation Commission is a latecomer in this area. The world would indeed be surprised if the Commission had not found apartheid to be a crime against humanity.

Reference 9 - 0.01% Coverage

Marcos' Philippines - simply because these declared themselves to be antiCommunist. The USA was ready to subvert democratically-elected governments by supporting internal dissidents in their efforts to overthrow legitimate regimes - such as the Contras in Nicaragua and UNITA in Angola - because the elected governments were Communist-influenced or fellow-travellers. The West did not seem to care too much about the human rights records of their surrogates. What we are underlining is that, to understand this Cold War period, one has to acknowledge the key role of Soviet Communism.

64 I want to suggest that apartheid and racism played a similar defining role in the history of the period under review. The vast majority, if not all, of the gross violations of human rights that were perpetrated in this period happened at the hands either of those who sought to defend the unjust apartheid and racist dispensation or those who sought to resist and ultimately overthrow that system.

65 This is not the same as saying that racism was introduced into South Africa by those who brought apartheid into being. Racism came to South Africa in 1652; it has been part of the warp and woof of South African society since then. It was not the supporters of apartheid who gave this country the 1913 Land Act which ensured that the indigenous people of South Africa would effectively become hewers of wood and drawers of water for those with superior gun power from overseas. 1948 merely saw the beginning of a

refinement and intensifying of repression, injustice and exploitation. It was not the upholders of apartheid who introduced gross violations of human rights in this land. We would argue that what happened when 20 000 women and children died in the concentration camps during the Anglo-Boer War is a huge blot on our copy book. Indeed, if the key concepts of confession, forgiveness and reconciliation are central to the message of this report, it would be wonderful if one day some representative of the British/English community said to the Afrikaners, "We wronged you grievously. Forgive us." And it would be wonderful too if someone representing the Afrikaner community responded, "Yes, we forgive you - if you will perhaps let us just tell our story, the story of our forebears and the pain that has sat for so long in the pit of our stomachs unacknowledged by you." As we have discovered, the telling has been an important part of the process of healing.

Reference 10 - 0.01% Coverage

80 I am honoured to express our gratitude to all those over 20 000 persons who came forward to tell us their stories - either at the public hearings of our Human Rights Violations Committee or in the statements recorded by our statement takers. They were generous in their readiness to make themselves vulnerable; to risk opening wounds that were perhaps in the process of healing, by sharing the often traumatic experiences of themselves or their loved ones as victims of gross violations of human rights. We are deeply in their debt and hope that coming to the Commission may have assisted in the rehabilitation of their human and civil dignity that was so callously trampled underfoot in the past. We pray that wounds that may have been re-opened in this process have been cleansed so that they will not fester; that some balm has been poured on them and that they will now heal.

Reference 11 - 0.01% Coverage

91 Ours is a remarkable country. Let us celebrate our diversity, our differences. God wants us as we are. South Africa wants and needs the Afrikaner, the English, the coloured, the Indian, the black. We are sisters and brothers in one family - God's family, the human family. Having looked the beast of the past in the eye, having asked and received forgiveness and having made amends, let us shut the door on the past - not in order to forget it but in order not to allow it to imprison us. Let us move into the glorious future of a new kind of society where people count, not because of biological irrelevancies or other extraneous attributes, but because they are persons of infinite worth created in the image of God. Let that society be a new society - more compassionate, more caring, more gentle, more given to sharing - because we have left "the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice" and are moving to a future "founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex."

Reference 12 - 0.01% Coverage

the secure foundation for the people of South Africa to transcend the divisions and strife of the past, which generated gross violations of human rights, the transgression of humanitarian principles in violent conflicts and a legacy of hatred, fear, guilt and revenge.

Reference 13 - 0.01% Coverage

■ GROSS HUMAN RIGHTS VIOLATIONS IN POLITICAL & HISTORICAL PERSPECTIVE

Reference 14 - 0.01% Coverage

For decades South African history has been dominated by a deep conflict between a minority which reserved for itself all control over the political instruments of the state and a majority who sought to resist that domination. Fundamental human rights became a major casualty of this conflict ... the legitimacy of the law itself was deeply wounded as the country haemorrhaged in the face of this tragic conflict ...

2 The Promotion of National Unity and Reconciliation Act (the Act) charged the Truth and Reconciliation Commission (the Commission) with investigating and documenting gross human rights violations committed within or outside South Africa in the period 1960-94. In doing so, it was to compile as complete a picture as possible of these events and violations. In its report, therefore, the Commission seeks to reflect fairly and fully the motives and perspectives of both the alleged perpetrators of gross human rights violations and of their victims.

3 Before starting on the long journey through these volumes, two major points or themes need to be developed in order to place their context in fuller political and historical perspective. The first of these relates to the fact that this report covers only a small fraction of time - although possibly the worst and certainly, in regard to the wider region, the bloodiest in the long and violent history of human rights abuse in this subcontinent. The second point to be made is that the report tells only a small part of a much larger story of human rights abuse in South and southern Africa.

Reference 15 - 0.01% Coverage

6 Thus, it is evident that it was not the National Party government that introduced racially discriminatory practices to this part of the world. Nor is it likely that the National Party government was the first to perpetrate some or most of the types of gross violations of human rights recorded in this report. The probable exception is that category of abuse that falls under the general rubric of contra-mobilisation - exemplified by the deployment of surrogate forces such as the Caprivi-trained Inkatha supporters, the Witdoeke, the A-team and other politicised gangs, as well as those forces, such as UNITA, that were used to destabilise the region.

Reference 16 - 0.01% Coverage

e The South African War of 1899-1902 during which British forces herded Boer women and children into concentration camps in which some 20 000 died - a gross human rights violation of shocking proportions.²

Reference 17 - 0.01% Coverage

19 As noted in the Mandate chapter later in this volume, the Commission's governing Act limited its investigation to gross violations of human rights defined as the "killing, abduction, torture or severe ill-treatment" and the "attempt, conspiracy, incitement, instigation, command or procurement to commit" such acts. In essence, therefore, the Commission was restricted to examining only a fraction of the totality of human rights violations that emanated from the policy of apartheid - namely, those that resulted in physical or mental harm or death and were incurred in the course of the political conflicts of the mandate period.

Reference 18 - 0.01% Coverage

21 Furthermore, in applying this system and in seeking to perpetuate it, the government of South Africa let loose upon the wider region a reign of terror and destruction. It was for this reason that Parliament mandated the Commission to include within its scope gross human rights violations that occurred outside South Africa.

22 Conceptually, the policy of apartheid was itself a human rights violation. The determination of an individual's civil and political rights by a factor - skin colour - over which he or she has no control, constitutes an abuse of those rights. Of course, such discrimination existed before 1948 and had its roots far back in South Africa's colonial past. Nevertheless, the apartheid state that was constructed after 1948 had dimensions that made it different from the discriminatory orders that preceded it.

Reference 19 - 0.01% Coverage

43 Thus, it needs constantly to be borne in mind that, while the state and other operatives were committing the murders and abductions and other violations documented in this report, a much larger pattern of human rights violations was unfolding. These may not have been 'gross' as defined by the Act, but they were, nonetheless, an assault on the rights and dignity of millions of South Africans and they were, in large part, the product of the core legislation, and subsequent amendments, outlined above.

44 This point is eloquently developed in the Mandate chapter. For the vast majority of South Africans, human rights abuse was:

Reference 20 - 0.01% Coverage

45 Thus, while only some 21 300 persons filed gross human rights violations petitions with the Commission, apartheid was a grim daily reality for every black South African. For at least 3.5 million black South Africans it meant collective expulsions, forced migration, bulldozing, gutting or seizure of homes, the mandatory carrying of passes, forced removals into rural ghettos and increased poverty and desperation. Dumped in the 'national states' without jobs, communities experienced powerlessness, vulnerability, fear and injustice.

Reference 21 - 0.01% Coverage

notions of the 'red peril' were manipulated to justify the perpetration of the gross human rights violations this Commission was charged to investigate.

Reference 22 - 0.01% Coverage

a The Human Rights Violations Committee: Archbishop Desmond Tutu (Chairperson), Mr Wynand Malan (Vice-Chairperson), Ms Yasmin Sooka (Vice-Chairperson), Dr Alex Boraine, Ms Mary Burton, the Revd Bongani Finca, Mr Richard Lyster, and Dr Fazel Randera.

Reference 23 - 0.01% Coverage

1 After taking legal advice to the effect that only two commissioners could serve on the Amnesty Committee, it was decided that Adv Potgieter should serve on the Human Rights Violations Committee. A number of changes were made to the composition of the Amnesty Committee later in the life of the Commission. See the administrative report of the Amnesty Committee in this volume.

2 It was subsequently agreed that Mr Dumisa Ntsebeza should also serve on the Human Rights Violations Committee. VOLUME 1 CHAPTER 3 Setting up the Commission

Reference 24 - 0.01% Coverage

4 On 8 January 1996, the Human Rights Violations Committee held its first meeting at the Johannesburg International Airport. A work plan for the Committee was tabled and discussed. It was agreed that the Committee would need to function in a decentralised manner.

5 The full Commission held its second meeting on 22 - 26 January 1996 when a wide range of topics was discussed and decisions were made. After reviewing and discussing the Promotion of National Unity and Reconciliation Act (the Act), the Commission agreed that it would maintain regional offices in four centres, namely Cape Town, Johannesburg, Durban and East London. It agreed further that the headquarters of the Amnesty Committee would be in Cape Town, while the headquarters of both the Human Rights Violations Committee and the Reparation and Rehabilitation Committee would be in Johannesburg. There was a series of discussions on the role of the Investigation Unit, the management of information, the need for a sophisticated database, a media and communication strategy for the Commission, and the need for the safety and security of Commission staff and resources. An organisational plan outlining the staffing structure of the Commission was tabled and discussed, and the Commission agreed to advertise for staff without delay. Other matters discussed included the recording and transcription of meetings and hearings, and assistance offered by international donors.

Reference 25 - 0.01% Coverage

I have the privilege and responsibility to introduce today a Bill which provides a pathway, a stepping stone, towards the historic bridge of which the Constitution speaks whereby our society can leave behind the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice, and commence the journey towards a future founded on the recognition of human rights, democracy and peaceful co-existence, and development opportunities for all South Africans irrespective of colour, race, class, belief or sex.

Its substance is the very essence of the constitutional commitment to reconciliation and the reconstruction of society. Its purpose is to provide that secure foundation which the Constitution enjoins: '...for the people of South Africa to transcend the divisions and strife of the past, which generated gross human rights violations... and a legacy of hatred, fear, guilt and revenge'.

Reference 26 - 0.01% Coverage

2 The Commission was conceived as part of the bridge-building process designed to help lead the nation away from a deeply divided past to a future founded on the recognition of human rights and democracy. Its purpose needs to be understood in the context of a number of other instruments aimed at the promotion of democracy, such as the Land Claims Court, the Constitutional Court and the Human Rights, Gender and Youth Commissions, all institutional 'tools' in the transformation of South African society.

Reference 27 - 0.01% Coverage

3 One of the main tasks of the Commission was to uncover as much as possible of the truth about past gross violations of human rights - a difficult and often very unpleasant task. The Commission was founded, however, in the belief that this task was necessary for the promotion of reconciliation and national unity. In other words, the telling of the truth about past gross human rights violations, as viewed from different perspectives, facilitates the process of understanding our divided pasts, whilst the public

acknowledgement of 'untold suffering and injustice' (Preamble to the Act) helps to restore the dignity of victims and afford perpetrators the opportunity to come to terms with their own past.¹

Reference 28 - 0.01% Coverage

6 The first call for a South African truth commission came from the African National Congress (ANC) before the first democratic elections in 1994. Professor Kader Asmal mooted the idea on his installation as Professor of Human Rights Law at the University of the Western Cape on 25 May 1992, saying:

Reference 29 - 0.01% Coverage

7 Soon afterwards, Asmal's call became a firm proposal of the National Executive Committee of the ANC, following an investigation of accusations that the ANC in-exile had perpetrated human rights violations in some of its camps. In response to the allegations, the ANC set up its own internal commissions of enquiry, the Stuart, Skweyiya and Motsuenyane commissions. The reports of these commissions confirmed that gross human rights violations had taken place in the camps. The National Executive Committee accepted the criticisms levelled at the organisation. It expressed the view, however, that the violations committed by the ANC should be seen against the background of the human rights violations that had taken place in South Africa over a much longer period. It proposed the appointment of a truth commission as a way of achieving this. This was perhaps the first time in history that a liberation movement or government-in-waiting had called for an independent investigation of this kind, aimed at enquiring into allegations of violations of human rights not only by the previous regime, but also by its own members.

8 In the meantime, the negotiations that would bring apartheid and political conflict to an end and herald the introduction of democracy in South Africa had begun. They took place within an international framework, which increasingly emphasised the importance of human rights and the need to deal with past human rights violations.

Reference 30 - 0.01% Coverage

2 Professor Carl Aage Norgaard is former President of the European Commission on Human Rights. He developed criteria to help define politically-motivated offences in Namibia, which became known as the Norgaard Principles.

Reference 31 - 0.01% Coverage

18 After the conclusion of the Record of Understanding, the focus shifted to the question of how a future democratic government would deal with amnesties for political offences and especially for the security forces. Two matters were settled relatively early. It was agreed, in the first place, that actions taken in terms of apartheid law would not merely for that reason be regarded as illegal and that there would be no Nuremberg-type trials for the many human rights violations legally committed in the course of implementing apartheid.

Reference 32 - 0.01% Coverage

20 A number of NGOs and others played a role in preparing the ground for a truth commission. There were one or two major conferences, attended by leading scholars and human rights practitioners, that stimulated wide debate in civil society and in Parliament.

Reference 33 - 0.01% Coverage

amnesty as required by the interim Constitution. It stressed, too, the importance of victims to the proposed process, emphasising their right to tell their stories of suffering and struggle. This became an essential focus of the envisaged commission - what has been described as a 'victim-centred approach'. The legislation also required that, in order for amnesty to be granted, there should be full disclosure of the violations in respect of which it was sought. In this way, the 'stick' of prosecutions and civil claims was combined with the 'carrot' of amnesty to encourage perpetrators to testify about gross violations of human rights. This was a unique feature of the South African commission. National unity and reconciliation could be achieved only, it was argued, if the truth about past violations became publicly known.

Reference 34 - 0.01% Coverage

23 One of the compromises reached between the ANC and the National Party (NP) when the Bill was discussed in Cabinet had been that amnesty hearings should be held behind closed doors. Human rights organisations and other NGOs successfully contested this and the principle of open hearings, except where it defeated the ends of justice, was won. The Bill was signed into law by the President on 19 July 1994 and came into effect on 1 December 1995 after the Commissioners had been appointed. The appointment process was also open and transparent. Despite the fact that the legislation gave the President the authority to decide who would serve on the Commission, President Mandela decided to appoint a broadly representative committee to assist him in the process of identifying the commissioners. Organisations of civil society participated in the process by nominating prospective commissioners and monitoring the hearings which led to the appointments. The committee called for nominations and 299 names were received. After the public hearings, a list of twenty-five names was submitted to President Mandela. The President consulted with his Cabinet and with the heads of the political parties and appointed the required seventeen commissioners.

Reference 35 - 0.01% Coverage

a establishing as complete a picture as possible of the causes, nature and extent of the gross violations of human rights which were committed during the period from 1 March 1960 to the cut-off date, including the antecedents, circumstances, factors and context of such violations, as well as the perspectives of the victims and the motives and perspectives of the persons responsible for the commission of the violations, by conducting investigations and holding hearings;

Reference 36 - 0.01% Coverage

d compiling a report providing as comprehensive an account as possible of the activities and findings of the Commission contemplated in paragraphs (a), (b) and (c), and which contains recommendations of measures to prevent the future violations of human rights.

Reference 37 - 0.01% Coverage

a facilitate, and where necessary initiate or co-ordinate, inquiries into- (i) gross violations of human rights, including violations which were part of a systematic pattern of abuse; (ii) the nature, causes and extent of gross violations of human rights, including the antecedents, circumstances, factors, context, motives and perspectives which led to such violations; (iii) the identity of all persons, authorities, institutions and

organisations involved in such violations; (iv) the question whether such violations were the result of deliberate planning on the part of the State or a former state or any of their organs, or of any political organisation, liberation movement or other group or individual; and (v) accountability, political or otherwise, for any such violation;

Reference 38 - 0.01% Coverage

d determine what articles have been destroyed by any person in order to conceal violations of human rights or acts associated with a political objective;

Reference 39 - 0.01% Coverage

h make recommendations to the President with regard to the creation of institutions conducive to a stable and fair society and the institutional, administrative and legislative measures which should be taken or introduced in order to prevent the commission of violations of human rights.

Reference 40 - 0.01% Coverage

a analysing and describing the "causes, nature and extent" of gross violations of human rights that occurred between 1 March 1960 and 10 May 1994, including the identification of the individuals and organisations responsible for such violations;

b making recommendations to the President on measures to prevent future violations of human rights;

c the restoration of the human and civil dignity of victims of gross human rights violations through testimony and recommendations to the President concerning reparations for victims;

Reference 41 - 0.01% Coverage

34 It was recognised at the outset that the Commission could not carry out all the tasks required of it simultaneously. Thus, it first gave attention to the question of the restoration of the human and civil dignity of (individual) victims of past gross human rights violations. It did so by creating opportunities for victims "to relate their own accounts" of the violations they had suffered by giving testimony at public hearings across the length and breadth of South Africa between April 1996 and June 1997. These highly publicised hearings were coupled with an extensive statement-taking drive, investigations, research and so-called 'section 29' hearings (where witnesses and alleged perpetrators were subpoenaed) in order to "establish the fate or whereabouts of victims" and the identity of those responsible for human rights violations.

35 During the second half of the Commission's life (from approximately the middle of 1997), the Commission shifted its focus from the stories of individual victims to an attempt to understand the individual and institutional motives and perspectives which gave rise to the gross violations of human rights under examination. It enquired into the contexts and causes of these violations and attempted to establish the political and moral accountability of individuals, organisations and institutions. The goal was to provide the grounds for making recommendations to prevent future human rights violations. Features of this phase were public submissions by, and questioning of, political parties, and a range of institutional, sectoral and special hearings that focused on the health and business sectors, the legal system, the media and faith communities, prisons, women, children and youth, biological and chemical warfare and compulsory national service. It was also during this period that the majority of amnesty hearings took place.

Reference 42 - 0.01% Coverage

38 However, when dealing with gross human rights violations committed by perpetrators, the person against whom that violation is committed can only be described as a victim, regardless of whether he or she emerged a survivor. In this sense, the state of mind and survival of the person is irrelevant; it is the intention and action of the perpetrator that creates the condition of being a victim.

Reference 43 - 0.01% Coverage

40 The use of the word 'perpetrator' to describe all persons found by the Commission to have committed gross violations of human rights was also the source of some discomfort as it made no distinction between the kinds of acts committed, the reasons why they were committed, their consequences or their context. It also does not distinguish between 'perpetrators' who committed one act and those whose entire operation and purpose was the commission of such acts.

Reference 44 - 0.01% Coverage

■ WHO WERE VICTIMS OF GROSS VIOLATIONS OF HUMAN RIGHTS?

Reference 45 - 0.01% Coverage

... 'gross violation of human rights' means the violation of human rights through - (a) the killing, abduction, torture or severe ill treatment of any person; or (b) any attempt, conspiracy, incitement, instigation, command or procurement to commit an act referred to in paragraph (a), which emanated from conflicts of the past and which was committed during the period 1 March 1960 to 10 May 1994 within or outside the Republic, and the commission of which was advised, planned, directed, commanded or ordered, by any person acting with a political motive (section 1(1)(ix).

43 This definition is a reminder that the responsibility for building the bridge between a dehumanising past and a just and democratic future does not belong to the Commission alone. Furthermore, in making its own limited contribution, the Commission had to walk a tightrope between too wide and too narrow an interpretation of gross violations of human rights. The Commission would have neither the lifespan nor the resources to implement a broadly constituted interpretation. Too narrow an interpretation, on the other hand, might have added insult to the injuries and injustices experienced by the many victims who would have been excluded.

Reference 46 - 0.01% Coverage

51 It is this systemic and all-pervading character of apartheid that provides the background for the present investigation. During the apartheid years, people did many evil things. Some of these are the gross violations of human rights with which this Commission had to deal. But it can never be forgotten that the system itself was evil, inhumane and degrading for the many millions who became its second and third class citizens. Amongst its many crimes, perhaps the greatest was its power to humiliate, to denigrate and to remove the selfconfidence, self-esteem and dignity of its millions of victims. Mtutuzeli Matshoba expressed it thus:

Reference 47 - 0.01% Coverage

55 While taking these submissions very seriously, the Commission resolved that its mandate was to give attention to human rights violations committed as specific acts, resulting in severe physical and/or mental injury, in the course of past political conflict. As such, the focus of its work was not on the effects of laws passed by the apartheid government, nor on general policies of that government or of other organisations, however morally offensive these may have been. This underlines the importance of understanding the Commission as but one of several instruments responsible for transformation and bridge-building in postapartheid South Africa.

Reference 48 - 0.01% Coverage

58 Thus, a strong argument can be made that the violations of human rights caused by 'separate development' – for example, by migrant labour, forced removals, bantustans, Bantu education and so on – had, and continue to have, the most negative possible impact on the lives of the majority of South Africans. The

Reference 49 - 0.01% Coverage

59 Hence, the Commission fully recognised that large-scale human rights violations were committed through legislation designed to enforce apartheid, through security legislation designed to criminalise resistance to the state, and through similar legislation passed by governments in the homelands. Its task, however, was limited to examining those 'gross violations of human rights' as defined in the Act. This should not be taken to mean, however, that those 'gross violations of human rights' (killing, torture, abduction and severe ill treatment) were the only very serious human rights violations that occurred.

Reference 50 - 0.01% Coverage

a facilitate inquiries into the nature, causes and extent of gross violations of human rights, including the antecedents, circumstances, factors, context, motives and perspectives that led to such violations;
b establish organisational involvement and responsibility and identify all persons, authorities, institutions and organisations involved in gross violations of human rights;

Reference 51 - 0.01% Coverage

c determine whether gross violations of human rights were part of deliberate planning on the part of the state or an organisation;
d discuss whether gross violations of human rights were part of a systematic pattern of abuse;
e make recommendations on the creation of institutions conducive to a stable and fair society and on institutional, administrative and legislative measures to prevent the perpetration of human rights violations.

Reference 52 - 0.01% Coverage

64 In making judgements in respect of the above requirements, the Commission was guided by criteria derived from just war theory (which was referred to in several submissions made to the Commission by political parties), international human rights principles and the democratic values inherent in the South African Constitution. By using these criteria, the Commission was able to take clear positions on the evils of apartheid, while also evaluating the actions of those who opposed it.

Reference 53 - 0.01% Coverage

71 The application of 'the last resort' criterion in just war theory obviously yields a less straightforward answer. Submissions to the Commission by the NP, FF and the IFP contested the necessity for the resort to armed resistance by the liberation movements. This matter will always be the subject of debate. However, any analysis of human rights violations which occurred during the conflicts of the past, and any attempt to prevent a recurrence of such violations, must take cognisance of the fact that, at the heart of the conflict, stood an illegal, oppressive and inhuman system imposed on the majority of South Africans without their consent. There had, over many decades, been numerous attempts by those opposed to this system to bring about change by non-violent means, before resorting to armed resistance.

Reference 54 - 0.01% Coverage

a five of the most senior judges, on behalf of the judiciary past and present, declared in a submission to the Commission that apartheid was, in itself, a gross violation of human rights;

Reference 55 - 0.01% Coverage

73 The recognition of apartheid as an oppressive and inhuman system of social engineering is a crucial point of departure for the promotion and protection of human rights and the advancement of reconciliation in South Africa. It is thus a great sign of hope to the Commission and to the future of the South African nation that, during the 1980s, the early 1990s and during the life of the Commission, increasing numbers of those who formulated and implemented apartheid have recognised not only the political unsustainability but also the immorality of this system.

Reference 56 - 0.01% Coverage

76 It is for this reason that the Commission considered the concept of crimes against humanity at both a systemic level and at the level of specific acts. Apartheid as a system was a crime against humanity, but it was also possible for acts carried out by any of the parties to the conflicts of the past to be classified as human rights violations.

Reference 57 - 0.01% Coverage

77 Thus, the Commission adopted the view that human rights violations could be committed by any group or person inside or outside the state: by persons within the Pan Africanist Congress (PAC), the IFP, the South African Police (SAP), the South African Defence Force (SADF), the ANC or any other organisation.

78 It is important to note, however, that this wider application of human rights principles to non-state entities is a relatively recent international development. Traditionally, human rights focused on relations between state and citizens and on protecting the individual from the power of the state. Private non-state entities were not subject to the same restrictions and scrutiny. The traditional exceptions to this have been found in the area of war crimes and crimes against humanity which, even under the traditional definition of human rights, can be committed by any individual or entity.

Reference 58 - 0.01% Coverage

79 The Act establishing the Commission adopted this more modern position. In other words, it did not make a finding of a gross violation of human rights conditional on a finding of state action. This extended view of human rights prohibitions reflects modern developments in international human rights law. It also contributes to national unity and reconciliation by treating individual victims with equal respect, regardless of whether the harm was caused by an official of the state or of the liberation movements.

80 At the same time, it must be said that those with the most power to abuse must carry the heaviest responsibility. It is a matter of the gravest concern when the state, which holds the monopoly on public force and is charged with protecting the rights of citizens, uses that force to violate those rights. The state has a whole range of powerful institutions at its disposal - the police, the judicial system, the mass media, parliament - with which it may denounce, investigate and punish human rights violations by private citizens or non-governmental groups. When this power is used to violate the rights of its citizens, as described in the report of the Chilean commission, their normal vulnerability is transformed into utter defencelessness.

81 This sensitivity to the unequal power relationships between state and non-state agents should be seen as an attempt to help lay the foundation for the rehabilitation of state institutions in order to hold present and future governments accountable for their use and abuse of power. It is thus central to the effort to prevent future violations of human rights.

■ DEFINING GROSS VIOLATIONS OF HUMAN RIGHTS

82 The Act did not provide clear guidelines for the interpretation of the definition of "gross violations of human rights". In order to determine which acts constituted gross violations of human rights, it was important to interpret the definition and to consider whether there were any limitations excluding particular acts from this definition. The Act used neutral concepts or terms to describe the various acts that constituted a gross violation of human rights. For example, 'killing' and 'abduction' were used rather than murder or kidnapping. Clearly, the intention was to try to avoid introducing concepts with a particular content in terms of the applicable domestic criminal law. This was to avoid equating what

Reference 59 - 0.01% Coverage

83 Two distinct enquiries were envisaged by the Act insofar as it concerned the question of gross violations of human rights:

a Was a gross violation of human rights committed and what was the identity of the victim? (section 4(b))

Reference 60 - 0.01% Coverage

86 Hence, the Commission could find that a gross human rights violation had been committed because there was a victim of that violation. It had, however, to apply a more stringent test in order to hold a perpetrator accountable for that violation.

Reference 61 - 0.01% Coverage

87 It was in relation to this more rigorous test that issues such as justification were taken into account. A perpetrator could not be held accountable if the conduct in question was legally justified. Thus, for example, a person who killed in self defence could not be held accountable as a perpetrator of a gross violation of human rights. This raised the question of whether the notion of unlawfulness was implicit in the definition of gross violations of human rights in the Act. In other words, must a particular act be unlawful for it to amount to a violation of human rights in the sense of a crime or a delict? In order to answer this question, it is important to take into account the fact that the issue of justification (for example, self defence and necessity) does not affect the nature of conduct but excuses its consequences.

A legitimate killing in self defence still amounts to the deprivation of life and a violation of the right to life, but the law does not hold the perpetrator liable for the consequence of this conduct. Thus, although justification does not affect the nature of the act, it does affect the issue of accountability.

88 As a consequence, the position adopted by the Commission was that any killing, abduction, torture or severe ill treatment which met the other requirements of the definition amounted to a gross violation of human rights, regardless of whether or not the perpetrator could be held accountable for the conduct.

89 It is important to note that the categories of victims and perpetrators are defined in terms of specific acts, such as killing. The categories are not, however, mutually exclusive. Thus, for example, a person who may, in one situation, be a victim of severe ill treatment by the police may, in another, become a perpetrator of a gross violation of human rights through his or her killing of a political opponent.

Reference 62 - 0.01% Coverage

91 The political conflicts of the past were not only of a 'civilian' nature. Several of the political groupings had an armed wing. The state used its armed forces to put down resistance and to engage in military actions in the southern African region. The Commission had particular difficulty in attempting to define and reach consensus on its mandate in this respect. Some argued that all killed and injured combatants should be included as victims of gross human rights violations. Others wanted to maintain a distinction between those defending the apartheid state and those seeking to bring it down. It was noted that members of the armed forces involved in these combat situations did not expect to be treated as victims of gross violations of human rights. This was illustrated in the submissions of political parties such as the NP and the ANC, which did not identify their members killed in combat as victims. In the end, the Commission decided to follow the guidelines provided by the body of norms and rules contained in international humanitarian law.

92 Armed conflicts between clearly identified combatants thus provided the only exception to the Commission's position that victims of gross violations of human rights should include all who were killed, tortured (and so on) through politically-motivated actions within the mandated period.

Reference 63 - 0.01% Coverage

a SADF soldiers or SAP members acting as soldiers (for example members of the Koevoet Unit) who were killed or seriously injured in combat (during, for example, the Namibian and Angolan 'border wars') and Umkhonto weSizwe (MK) or Azanian Peoples Liberation Army (APLA) soldiers killed or seriously injured in combat were not viewed as victims of gross violations of human rights as defined by the Act. This is consistent with the position taken in the submissions made to the Commission by the NP, FF, the South African National Defence Force (SANDF) and the ANC.

b Those combatants who were killed or seriously injured while they were unarmed or out of combat, executed after they had been captured, or wounded when they clearly could have been arrested were held to be victims of gross violations of human rights, and those responsible were held accountable.

c In cases where the Commission could not determine whether a combatant was out of combat, and therefore regarded as a protected person, it followed the precedent set by international humanitarian law. The Commission gave the benefit of the doubt to people killed or seriously injured in uncertain circumstances and found them to be victims of gross violations of human rights.

d Conscripted soldiers in the SADF were defined as combatants, even where the system of conscription obliged them to perform military service against their will, threatening heavy penalties if they did not do so. Like all combatants, they may have qualified as victims of a gross violation of human rights in certain circumstances, such as being subjected to torture or killed when injured.

Reference 64 - 0.01% Coverage

108 Thus, the Commission made a conscious decision to err on the side of inclusivity – finding that most killings and serious injuries were gross violations of human rights rather than the result of the legitimate use of force. Where the evidence of a combat situation was clear, however, the traditional laws of war were applied.

■ MAKING FINDINGS OF GROSS VIOLATIONS OF HUMAN RIGHTS

109 As the Commission embarked on the road of seeking to restore the dignity of victims through extensive statement taking and public hearings, it was confronted with the sometimes difficult task of interpreting the categories of acts contained in the definition of gross violations of human rights, and of formulating criteria to determine the 'political' motivation of these acts of killing, torture, abduction and severe ill treatment.

Reference 65 - 0.01% Coverage

111 'Abduction' was defined as the forcible and illegal removal or capturing of a person. This definition did not include arrests and detentions that satisfied universally recognised international human rights standards, nor the capturing of an enemy soldier in a situation of armed conflict. It was a category applied in the majority of cases where people 'disappeared' after having last been seen in the custody of the police or of other persons who were using force.

Reference 66 - 0.01% Coverage

112 In defining the category of 'killing', some difficulties were presented by the killing of combatants. The Commission's position in this regard is discussed earlier in this chapter. Many killings reported to the Commission were of people described as innocent bystanders caught in the crossfire. These were found to be victims of gross violations of human rights if the other conditions were fulfilled.

113 The Commission considered the executions of activists or other persons for politically-motivated crimes both within the established legal system and in other settings (for example, in 'peoples' courts', or in tribunals or summary hearings conducted by the liberation movements). After considerable debate, the Commission agreed to consider all such executions, whether carried out by the state or the liberation movements, as gross violations of human rights. This decision was taken in the light of the need to promote a national and international human rights culture. It also took into account the lack of legitimacy of the legal system and the laws of the time, as well as the absence of minimal due process protections and proper forums of adjudication.

Reference 67 - 0.01% Coverage

20 Generally, human rights prohibitions are defined broadly rather than narrowly. See, for example, 'Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment', (G.A. res. 43/173, annex, 43 UN GAOR Supp (No. 49) at 298, UN Doc. A/43/49 (1988)). Principle 6 holds that the prohibition against cruel, inhuman, or degrading treatment or punishment should be interpreted "so as to extend to the widest possible protection of abuses."

Reference 68 - 0.01% Coverage

117 Whether an act or omission constituted severe ill treatment was thus determined on a case-by-case basis²³. The Commission determined that, in order to qualify as severe ill treatment, an act should meet the general criteria that apply to all gross violations of human rights.²⁴

Reference 69 - 0.01% Coverage

21 In a memorandum to the parliamentary Portfolio Committee on Justice, the Chief State Law Adviser defined severe ill treatment as 'extreme maltreatment or cruelty.' This narrowing of the scope of severe ill treatment is not inconsistent with the generally broad definition of human rights prohibitions. The Commission was not created to prevent or prohibit all contemporary violations of human rights on an ongoing basis, but to analyse and describe a particular subset of human rights abuses that occurred in the past. 22 In determining the scope of the prohibition against inhuman or degrading treatment, the European Court of Human Rights has noted that there are certain acts of violence that do not reach the minimum level of severity necessary to fall under the prohibition. Thus certain rough treatment of prisoners in custody, such as a few slaps or blows of the hand to the head or face would not be prohibited and do not qualify as severe ill treatment. (However, repeated blows to the head resulting in severe injury would clearly fall under the prohibition of both cruel, inhuman, or degrading treatment and severe ill treatment). See European Commission on Human Rights Appl. No. 5310/71; 1976 Yearbook, European Convention on Human Rights 512. See also Denmark, France, Norway, Sweden and Netherlands v Greece (1969) 12 Yearbook 501 (European Commission of Human Rights), and Ireland v United Kingdom, Opinions of 1976, at pp. 388-389 (Commission opinion of 25 January 1976). 23 This case-by-case approach with an emphasis on context is, in fact, the approach taken by South African courts with respect to 'illtreatment'. See *S v Lewis*, 1987 (3) SA 24 (C) (Brennan, J.) where it was argued that severe is a relative concept, meaning more severe than the circumstances warrant. 24 See above definition of gross violations of human rights.

Reference 70 - 0.01% Coverage

122 In interpreting this part of the definition of gross human rights violations, the Commission was guided by the definition of an "act associated with a political objective" (section 20(2) and (3)). However, it also went further and employed the less restrictive notion of 'political motive' (section 1(1)(x)). 123 The framework applied in implementing the political requirement was that a violation of human rights within the prescribed period was found to constitute a gross violation of human rights if it was advised, planned, directed, commanded, ordered or committed by:

Reference 71 - 0.01% Coverage

126 In the case of gross violations of human rights primarily related to labour conflicts (and not to the more narrowly defined political conflicts of the past), it was possible to differentiate further between:

Reference 72 - 0.01% Coverage

131 These also included 'third force' related actions, for example, drive-by shootings, train violence, and some manifestations of the taxi violence and similar events. Even where it was not possible clearly to identify the perpetrator as acting for a 'third force', victims of such incidents were found to have suffered gross human rights violations if the circumstances of the cases warranted it. All such matters were considered on a case-by-case basis.

Reference 73 - 0.01% Coverage

132 One of the most difficult decisions related to whether conviction and sentencing (often to unusually long periods of imprisonment) for 'public violence', or for offences defined in terms of other legislation specific either to the apartheid period or state of emergency regulations, could be considered gross violations of human rights. Factors that had to be taken into consideration were whether such provisions would now be in contravention of the South African Constitution, whether the severity of the sentence was out of proportion to the offence and whether there had been abuses in relation to due process. It was clear that the Commission could not recreate a court situation and review a conviction. Nevertheless, the Commission decided that, in certain cases, people who had been convicted in such circumstances could be deemed to have suffered a gross violation of their human rights. Again, these were dealt with on a case-by-case basis. If there was clear and compelling new evidence, the matter might be referred to the authorities for a possible reopening of the trial. As with capital punishment, the Commission's task was not to make a 'perpetrator finding' in relation to the court which had passed the sentence, but to decide whether or not there had been a gross violation of human rights.

Reference 74 - 0.01% Coverage

133 The decision to establish a finite list of victims was taken fairly late in the process of gathering information about violations. Initially, in keeping with the spirit of inclusivity that governed the work of the Commission, it was felt that all victims of gross violations of human rights that had been shown to have taken place should be considered.

Reference 75 - 0.01% Coverage

137 The Commission was obliged to identify all persons, authorities, institutions and organisations involved in gross violations of human rights. This meant that it had to go beyond the investigation of those that had actually committed gross violations of human rights and include those who had aided and abetted such acts. This is consistent with the definition of gross violations of human rights, which includes attempts, conspiracy, incitement, instigation, command or procurement to commit such acts.

138 The Commission based its conclusions on the evidence brought before it, firstly by people who made statements concerning gross violations of human rights, and secondly, by those who applied for amnesty. It also drew on the Investigation Unit's inspections of inquest records, court records, prison and police registers and on corroborative evidence produced by witnesses. Research into historical documentation produced additional information, and submissions to the Commission, especially from political parties, shed further light. The effort to apportion responsibility for planning, commanding, inciting and so on is discussed in a later chapter.

Reference 76 - 0.01% Coverage

In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

Reference 77 - 0.01% Coverage

147 However, individual police officers saw it as their duty to enforce laws that many of them did not, at the time, believe to be unjust. Indeed, in the South African context, the police were given very wide powers to use lethal force through, for example, the Criminal Procedure Act. In the overwhelming majority

of inquests involving allegations of excessive force, the police members involved were cleared of any misconduct. These included cases arising out of Sharpville, Soweto 1976 and the 'Trojan Horse' incidents in Athlone and Despatch, where local and international human rights organisations condemned the laws which made these acquittals possible and their uncritical application by the judiciary (see submissions on the judicial system).

148 Since the Commission had to decide whether specific acts by the SAP or homeland police forces constituted human rights violations and not necessarily whether they were legal or illegal in terms of the relevant domestic laws, it employed the internationally accepted principle of unnecessary or excessive force (described above). In the light of these international norms, the Commission found that, although the applicable South African laws at that time

Reference 78 - 0.01% Coverage

might not have been broken, fundamental human rights were often clearly violated. In a number of cases, the Commission was also presented with new and compelling evidence (for example corroborated statements by victims or witnesses) which strengthened the basis upon which it reached conclusions that differed from those reached at most inquests and criminal proceedings regarding police misconduct.

149 In determining whether excessive force was used, the Commission determined that it should be guided by the following considerations. First, as a body working to assist in the establishment of a culture of human rights, the Commission followed the inclusive approach to protection found in international humanitarian law. It thus interpreted human rights protections broadly to ensure maximum protection against violations. Second, since the primary duty of the police is to uphold law and order through the apprehension and arrest of those who break the law, the use of lethal force is justified only in extreme situations.

Non-state perpetrators of gross human rights violations

150 There were many cases where the Commission found that the use of force by the police was excessive and thus constituted a gross violation of human rights. There were also cases where the Commission found that violence against the police constituted a gross violation of human rights: for example, attempted killings (arson attacks when police were inside their homes) and killings of off-duty police. The latter cases were, however, fewer in number than those involving the police as perpetrators - an unsurprising result given the near monopoly of force exercised by those acting on behalf of a militarily powerful state.

151 Killings and severe ill treatment of people seen as informers or collaborators, attacks on people and places seen as part of the oppressive government and conflict between different political groupings, all formed part of the picture of gross human rights violations committed with a political motive.

Reference 79 - 0.01% Coverage

of all persons, authorities, institutions and organisations" involved in gross human rights violations, as well as the "accountability, political or otherwise, for any such violation" (section 4(a)(iii), (v), the Act).

153 In fulfilling this part of its mandate, the Commission was again required to walk a tightrope. This time, it was faced with the tension between the public interest in the exposure of wrongdoing and the need to ensure fair treatment of individuals in what was not a court of law; between the rights of victims of gross violations of human rights to know who was responsible and the fundamentally important question of fairness to those who are accused of crimes or serious wrongdoing.

Reference 80 - 0.01% Coverage

155 Given the investigative nature of the Commission's process and the limited legal impact of naming, the Commission made findings on the identity of those involved in gross violations of human rights based on the balance of probability. This required a lower burden of proof than that required by the conventional criminal justice system. It meant that, when confronted with different versions of events, the Commission had to decide which version was the more probable, reasonable or likely, after taking all the available evidence into account.

156 The kinds of evidence which guided the Commission in identifying those responsible for gross violations of human rights on the basis of the balance of probability included:

Reference 81 - 0.01% Coverage

b Instances where the Commission's investigations (section 29 hearings or investigative and research work) produced a high degree of corroboration (for example, other witnesses present at the time who supported the victim's statement). An example of a 'high' level of corroboration would be a situation where a witness confirmed the identity of the actual person committing the gross violation of human rights; a 'low' level of corroboration would be where the witness confirmed the event but not the identity of the perpetrator.

c Instances where names consistently recurred in the statements of people making allegations concerning gross violations of human rights (for example, vigilante groups). Even in such cases, perpetrators would not be named without first being sent a section 30 notice advising them that the Commission intended to name them and allowing them an opportunity to respond. This procedure applied to all instances where persons were at risk of being the subject of an adverse finding.

157 In view of the Commission's commitment to human rights, it approached the issue of naming perpetrators in a number of different ways:

Reference 82 - 0.01% Coverage

b In many cases, where the Commission had insufficient information to send out section 30 notices (see chapters on Legal Challenges and Methodology and Process) to persons allegedly implicated in gross violations of human rights, such alleged perpetrators were not named.

Reference 83 - 0.01% Coverage

d Naming of both individual(s) and institution(s) occurred where sufficient evidence was available to make a finding on the balance of probability and after completion of the correct procedure. This was not a finding of (legal) guilt, but of responsibility for the commission of a gross violation of human rights.

Reference 84 - 0.01% Coverage

159 In subsequent volumes of this report, the mandate is applied to a range of individual cases of alleged gross violations of human rights.

Reference 85 - 0.01% Coverage

1 It has been stated that the Commission - as part of the international human rights community - affirms its judgement that apartheid, as a system of enforced racial discrimination and separation, was a crime against humanity. The recognition of apartheid as a crime against humanity remains a fundamental starting point for reconciliation in South Africa. At the same time, the Commission acknowledges that

there are those who sincerely believed differently and those, too, who were blinded by their fear of a Communist 'total onslaught'.

Reference 86 - 0.01% Coverage

29 The information contained in this appendix has been enhanced through comments by John Dugard, Professor of International Law, University of the Witwatersrand. See also Memorandum of law in support of concluding that apartheid is a crime against humanity, submission to the Truth and Reconciliation Commission by Lowenstein International Human Rights Law Clinic of Yale Law School, Lawyers Committee for Human Rights and Catherine Admay, Abdullahi An-Na'im, Philip Alston, M. Cherif Bassiouni, Thomas Buergenthal, William S. Dodge, John Dugard, Richard Falk, Gregory H. Fox, Thomas M. Franch, Claudio Grossman, David J. Harris, Cynthia Crawford Lichenstein, Elliot Milstein, Steven R. Ratner, Anne-Marie Slaughter, Ronald C. Slye, Henry Steiner, Ralph G. Steinhardt, Johan D. van der Vyver and Richard J. Wilson. 30 See chapter on Concepts and Principles. There was no call for trials by the international community during or after the peaceful transition from apartheid to democracy between 1990 and 1994. It was recognised that the National Party had become an active participant in this transition and that the South African situation was no longer a threat or a potential threat to international peace. At former State President De Klerk's second appearance before the Commission in May 1997, the Commission placed on record its recognition of the vital role Mr De Klerk had played in the dismantling of the apartheid system. See Dugard 1997:275-6. 'Retrospective Justice and the South African Model' in *Transitional Justice and the Rule of Law in New Democracies*, Ed by AJ McAdams, Nôtre Dame: University of Nôtre Dame Press. 31 See Dugard (1997) and submission by Professor Don Foster to the Commission, May 1997.

Reference 87 - 0.01% Coverage

4 As indicated earlier, the definition of crimes against humanity can be applied at two levels. The first level of application, namely to apartheid as a system, flows from the Commission's obligation to enquire into the causes, nature and extent of gross violations of human rights, including the antecedents and context of such violations (section 3(a)). The Commission has concluded that the nature of the conflicts in general and the causes of the violations which occurred in the course of these conflicts cannot be understood without examining the system of apartheid within which they took place.

5 The Commission was also required, at a second level of application, to enquire which of the specific acts constituting gross violations of human rights "were part of a systematic pattern of abuse" (section 4(a)).

Reference 88 - 0.01% Coverage

A crime against humanity means any of the following acts, when committed in a systematic manner or on a large scale and instigated or directed by a government or by any organisation or group: ... (f) institutionalised discrimination on racial, ethnic or religious grounds involving the violation of fundamental human rights and freedoms and resulting in seriously disadvantaging a part of the population.

Reference 89 - 0.01% Coverage

Under the Charter of the United Nations, the former Mandatory had pledged itself to observe and respect, in a territory having an international status, human rights and fundamental freedoms for all without distinction as to race. To establish instead, and to enforce, distinctions, exclusions, restrictions and limitations exclusively based on the grounds of race, colour, descent or national or ethnic origin which

constitute a denial of fundamental human rights is a flagrant violation of the purposes and principles of the Charter. 43

Reference 90 - 0.01% Coverage

A crime against humanity means any of the following acts, when committed in a systematic manner or on a large scale and instigated or directed by a government or by any organisation or group: (a) murder; (b) extermination; (c) torture; (d) enslavement; (e) persecution on political, racial, religious or ethnic grounds; (f) institutionalised discrimination on racial, ethnic or religious grounds involving the violation of fundamental human rights and freedoms and resulting in seriously disadvantaging a part of the population; (g) arbitrary deportation or forcible transfer of population; (h) forced disappearance of persons; (i) rape, enforced prostitution and other forms of sexual abuse; (j) other inhumane acts which severely damage physical or mental integrity, health or human dignity, such as mutilation and severe bodily harm.

Reference 91 - 0.01% Coverage

23 The requirement that crimes against humanity must be committed in a systematic manner or on a large scale excludes acts which, although they are serious violations of human rights, occur in an isolated or random manner. The requirement is framed disjunctively, clearly indicating that it is not necessary for both requirements to be simultaneously satisfied. Simply, acts which occur on a large scale must occur in large numbers, while acts which occur systematically must follow a similar pattern and occur at different times and different places.

Reference 92 - 0.01% Coverage

This Constitution provides a historic bridge between the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans, irrespective of colour, race, class, belief or sex. The pursuit of national unity, the well-being of all South African citizens and peace require reconciliation between the people of South Africa and the reconstruction of society. The adoption of this Constitution lays the secure foundation for the people of South Africa to transcend the divisions and strife of the past which generated gross violations of human rights, the transgression of humanitarian principles in violent conflicts and the legacy of hatred, fear, guilt and revenge. These can now be addressed on the basis that there is a need for understanding but not vengeance, a need for reparation but not for retaliation, a need for ubuntu but not victimisation.

Reference 93 - 0.01% Coverage

1 The previous chapter emphasised the importance of viewing the Commission as part of the broader national process of 'building a bridge' between a deeply divided past of "untold suffering and injustice" and a future "founded on the recognition of human rights, democracy, peaceful co-existence, and development opportunities for all". This chapter seeks to clarify the concepts and principles underlying the Commission's work. Judge Richard Goldstone highlighted the importance of these concepts and principles thus:

Reference 94 - 0.01% Coverage

8 A major source of conflict in public debate concerned the question of amnesty. As already mentioned, the decision to grant amnesty was a feature of the negotiated political settlement and became a central responsibility of the Commission. Many participants, however, saw a contradiction between the work of the Human Rights Violations Committee, which devoted its time and resources to acknowledging the painful experiences of victims of gross violations of human rights, and the work of the Amnesty Committee, which freed many of the perpetrators of these violations from prosecution (and from prison) on the basis of full disclosure.

Reference 95 - 0.01% Coverage

[This is] a Bill which provides a pathway, a stepping stone, towards the historic bridge of which the Constitution speaks whereby our society can leave behind the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice, and commence the journey towards a future founded on the recognition of human rights, democracy and peaceful coexistence, and development opportunities for all South Africans irrespective of colour, race, class, belief or sex. Its substance is the very essence of the constitutional commitment to reconciliation and the reconstruction of society. Its purpose is to provide that secure foundation which the Constitution enjoins: '...for the people of South Africa to transcend the divisions and strife of the past, which generated gross human rights violations...and a legacy of hatred, fear, guilt and revenge'.

Reference 96 - 0.01% Coverage

14 In some cases, especially where the remains of loved ones were exhumed and dignified reburials were made possible, the Commission's disclosure of truth helped people to reach 'closure', to make peace with what had happened. However, the reconciliation of victims with their own pain is a deeply personal, complex and unpredictable process. Knowing the complete picture of past gross human rights violations, or even the facts of each case, may not lead to reconciliation. Truth may, in fact, cause further alienation.

Reference 97 - 0.01% Coverage

17 The effects of human rights violations were multiple, inflicting lasting damage on social relations. At a national level, the main dimension of the conflict was between the oppressed black population and the former state. However, within and between communities, conflict played itself out in various, often insidious, ways. Internal divisions occurred between the young and the old, men and women, neighbours, as well as between different ethnic and racial groups. All these aspects required attention.

Reference 98 - 0.01% Coverage

20 Many people within and outside the Commission warned against expecting too much, too soon from the reconciliation process at a national level. They were concerned about the imposition of a notion of reconciliation - associated with contrition, confession, forgiveness and restitution - on a diverse and divided society attempting to consolidate a fragile democracy. They argued that the most the Commission could and should hope for, at least in the short term, was peaceful coexistence. Thus, a healthy democracy does not require everyone to agree or become friends. However, a culture of human rights and democracy does require respect for our common human dignity and shared citizenship, as well as the peaceful handling of unavoidable conflicts.

Reference 99 - 0.01% Coverage

28 In addition, by bringing the darker side of the past to the fore, those responsible for violations of human rights could also be held accountable for their actions. In the process, they were given the opportunity to acknowledge their responsibility to contribute to the creation of a new South African society.

Reference 100 - 0.01% Coverage

33 The second area related to findings on the contexts, causes and patterns of violations. In this respect, the Commission was required to report on the broader patterns underlying gross violations of human rights and to explore the causes of such violations. To do this, it had to analyse, interpret and draw inferences from the information it received. In this regard, it became necessary for the Commission to adopt a social scientist's approach - making use of the information contained in its database and from a range of secondary sources. However, all truth commissions have their limitations. In the words of Michael Ignatieff:

Reference 101 - 0.01% Coverage

example, that: the practice of torture by state security forces was not systematic and widespread; that only a few 'rotten eggs' or 'bad apples' committed gross violations of human rights; that the state was not directly and indirectly involved in 'black-on-black violence'; that the chemical and biological warfare programme was only of a defensive nature; that slogans by sections of the liberation movement did not contribute to killings of 'settlers' or farmers; and that the accounts of gross human rights violations in the African National Congress (ANC) camps were the consequence of state disinformation. Thus, disinformation about the past that had been accepted as truth by some members of society lost much of its credibility.

Reference 102 - 0.01% Coverage

39 While narrative truth was central to the work of the Commission, especially to the hearings of the Human Rights Violations Committee, it was in its search for social truth that the closest connection between the Commission's process and its goal was to be found.

Reference 103 - 0.01% Coverage

45 It is in this context that the role of 'acknowledgement' must be emphasised. Acknowledgement refers to placing information that is (or becomes) known on public, national record. It is not merely the actual knowledge about past human rights violations that counts; often the basic facts about what happened are already known, at least by those who were affected. What is critical is that these facts be fully and publicly acknowledged. Acknowledgement is an affirmation that a person's pain is real and worthy of attention. It is thus central to the restoration of the dignity of victims.

Reference 104 - 0.01% Coverage

47 There can be little doubt that gross violations of human rights and other similar abuses during the past few decades left indelible scars on the collective South African consciousness. These scars often concealed festering wounds that needed to be opened up to allow for the cleansing and eventual healing of the body politic. This does not mean, however, that it was sufficient simply to open old wounds and then sit

back and wait for the light of exposure to do the cleansing. Nor could the Commission be expected to accomplish all the healing that was required. These basic underlying principles were expressed in the submission of Dr Leslie London, at the health sector hearing in Cape Town, 18 June 1997:

The [Health and Human Rights] Project operates with the premise that the health professions and society cannot afford to ignore the past, and that the costs of this selective amnesia, which we see so much of with regard to past human rights abuses, are enormous. It is very difficult to see how any trust within the health sector and also between the health professionals and the broader community can be achieved until the truth is disclosed.

We believe that only by fully acknowledging and understanding what took place in the professions under apartheid is it possible to achieve reconciliation in the health sector. Any apologies that are made without this understanding will fail to achieve meaningful progress in moving the health sector to a human rights culture.

And while the [Truth and Reconciliation Commission] has played an important role in stimulating this process, the real challenge that faces the health sector is for health professions to accept human rights as a fundamental responsibility. Real truth and reconciliation can only come from below, from within our institutions, and should be seen as part of a larger project to rehabilitate the health sector and build a culture of human rights within it.

Reference 105 - 0.01% Coverage

49 At the same time, many of those who had suffered gross violations of their human rights showed a remarkable magnanimity and generosity of spirit, not only through their willingness to display their pain to the world, but also in their willingness to forgive. Such forgiveness should never be taken for granted, nor should it be confused with forgetting. The importance of respectful remembrance was clearly expressed by Mr Haroon Timol, testifying about the death in detention of Mr Ahmed Timol, at the Johannesburg hearing, 30 April 1996:

Reference 106 - 0.01% Coverage

d Amnesty hearings involving gross violations of human rights were to take place in public, save in exceptional circumstances.

Reference 107 - 0.01% Coverage

61 Most people do not, of course, wish crimes merely to be condemned. For many people, justice means that perpetrators must be punished in proportion to the gravity of their crimes. If one accepts, however, that punishment is not a necessary prerequisite for the acknowledgement of accountability, it is possible to see that qualified amnesty does contain certain of the essential elements required by justice. Thus, individual perpetrators were identified and, where possible, the circumstances that gave rise to the gross violations of human rights they had committed were explained.

Reference 108 - 0.01% Coverage

67 In helping reveal details of gross human rights violations and the systems, motives and perspectives that made such violations possible, the amnesty process assisted the Commission in compiling as "complete a picture as possible of the nature, causes and extent" of past gross violations of human rights. The information acquired also helped the Commission in formulating recommendations aimed at the

prevention of future human rights violations. In this sense, the work of the Commission complemented the work of the broader judicial system in the following ways.

Reference 109 - 0.01% Coverage

68 Disclosures made during the amnesty process, together with information emerging at hearings, in victim statements and during investigations, contributed significantly to the Commission's understanding of the broad pattern of events during the thirty-four year mandate period. They also assisted the Commission in its analysis of key perpetrator groupings and institutional responsibility, and in the making of findings on the root causes of gross violations of human rights committed during the conflicts of the past. These insights provided the basis on which recommendations could be made - aimed both at helping prevent future human rights violations and complementing the necessarily narrower focus of formal trials.

69 A further limitation of the formal justice system emerged in relation to the need to make recommendations to help prevent future human rights abuse. A functioning and effective justice system is, of course, crucially important in this regard - reinforcing the rule of law, vindicating victims and so on. However, even a justice system functioning at its optimum level cannot provide all the answers. Prosecution and punishment are responses to abuses that have already taken place. While they may act as a deterrent, other initiatives are required to prevent

Reference 110 - 0.01% Coverage

abuses taking place. The Commission's recommendations on issues such as human rights training for the security forces and human rights education in schools and universities were crucial in this regard. For example, the implementation of the Commission's recommendations on the reform of the security forces may help to restore trust between the South African Police Services (SAPS) and the majority of South Africans. Such trust is essential if the security forces are to act as guarantors of human rights for all South Africans.

Reference 111 - 0.01% Coverage

71 Arguments against amnesty are based on the assumption that it is both preferable and possible to prosecute perpetrators. The response to the former - that it would be preferable to prosecute - has already been discussed. In a fragile, transitional context, there are strong arguments for the adoption of a truth commission rather than Nuremberg-type trials. But, even if the South African transition had occurred without any amnesty agreement, even if criminal prosecution had been politically feasible, the successful prosecution of more than a fraction of those responsible for gross violations of human rights would have been impossible in practice. The issue is not, therefore, a straight trade-off between amnesty and criminal or civil trials. What is at stake, rather, is a choice between more or less full disclosure; the option of hearing as many cases as possible against the possibility of a small number of trials revealing, at best, information only directly relevant to specific charges.¹³

Reference 112 - 0.01% Coverage

75 First, by indemnifying the state in this way, prolonged litigation is avoided. Such litigation is likely to lead to a preoccupation with anguish and rancour about the iniquities of the past and may thus divert the energies of the nation from the long-term objectives of national reconciliation and the reconstruction of society.¹⁷ Second, the achievement of reconciliation and the reconstruction of society demands that the

limited resources of the state be deployed in a way that brings relief and hope to as many South Africans as possible. Faced with competing demands between the formidable claims of victims of gross human rights violations and their families, and the desperate need to correct massive wrongs in the crucial areas of housing, education and health care, the framers of the interim Constitution favoured the reconstruction of society.

76 The immunity awarded to the state does not remove the burden of responsibility for state reparations. It does, however, give the new, democratic government discretion when making difficult choices about the distribution of scarce resources between the victims of gross human rights violations (who fall within the mandate of the Commission) and those many victims who fall outside of the Commission's mandate. The Minister of Justice has said:

Reference 113 - 0.01% Coverage

78 Through the Committee on Reparation and Rehabilitation, however, the Commission was mandated to focus on the immediate, visible need for subsistence of many victims (suffering, for example, from the loss of a breadwinner). Although no amount of reparations could ever make up for the losses suffered by individuals, families, and communities because of gross human rights violations, the nation has an obligation at least to try to transform abject poverty into modest security.

79 Other fundamental human needs needed to be addressed under the banner of reparation and rehabilitation. Victims and/or their families, dependants and friends needed to understand why gross violations of human rights took place. They needed to be free from the legacy of fear that prevented their full participation in the life of the community, stifled their creativity and undermined their dignity. Victims needed to know that, in the future, they would be protected from similar gross violations of human rights.

Reference 114 - 0.01% Coverage

88 This call was supported by Ms Susan van der Merwe, whose husband disappeared in 1978 after allegedly being abducted and killed by an Umkhonto weSizwe (MK) unit. At the Human Rights Violation hearing in Klerksdorp, on 23 September 1996, she said:

Reference 115 - 0.01% Coverage

90 Many people who witnessed the accounts of victims were confronted, for the first time, with the human face of unknown or silenced victims from the conflicts of the past. The public victim hearings vividly portrayed the fact that not only were international or domestic laws broken, not only was there a disrespect of human rights in the abstract, but the very dignity and 'personhood' of individual human beings were centrally violated.

Reference 116 - 0.01% Coverage

92 The fact that the state has accepted responsibility for providing reparations to victims of gross human rights violations provides an important counterbalance to the denial of the right of victims to lay civil charges against perpetrators who were granted amnesty. At the same time, however, the limitations of both the

Reference 117 - 0.01% Coverage

93 The plight of those who, through the legacy of apartheid, need assistance in the form of social spending (for housing, education, health care and so on) must also be remembered. The provision of reparations to the (relatively) few victims of gross human rights violations who appeared before the Commission cannot be allowed to prejudice apartheid's many other victims. The need to provide reparations for the former cannot be allowed to constitute so great a drain on the national fiscus that insufficient resources remain for essential social upliftment and reconstruction programmes.

94 Beyond these considerations, it must also be acknowledged that many victims of gross human rights violations would never have had the opportunity to seek redress through civil trials, given evidentiary constraints, proscription of civil claims, lack of information about the identity of perpetrators and the costs involved in pursuing claims. Overall, victims will have received far greater benefit from the Commission's processes than they would otherwise have done, although those few who had valid civil claims will have received less. In this sense, too, the Commission can be seen as having contributed to the promotion of restorative justice.

Reference 118 - 0.01% Coverage

96 The Commission not only condemned acts of killing, torture, abduction and severe ill treatment as violations of human rights. The concrete experiences of victims and the human impact of these violations were put before the nation. At the same time, the Commission sought to identify those responsible for such violations - seeking political accountability as well as moral responsibility.

Reference 119 - 0.01% Coverage

99 By concentrating only on individual, or on a limited number of prominent human rights violators, as was the case in the Nuremberg and Tokyo war tribunals, many perpetrators and co-conspirators remained in obscurity. The structures of society and its most formative institutions remained unchallenged. Recognising the need for social and institutional reparations is an important part of restorative justice.

Reference 120 - 0.01% Coverage

101 The emergence of a responsible society, committed to the affirmation of human rights (and, therefore, to addressing the consequences of past violations), presupposes the acceptance of individual responsibility by all those who supported the system of apartheid (or simply allowed it to continue to function) and those who did not oppose violations during the political conflicts of the past.

Reference 121 - 0.01% Coverage

103 This moral responsibility goes deeper than legal and political accountability. Such individual and shared moral responsibility cannot be adequately addressed by legislation or this Commission. What is required is that individuals and the community as a whole must recognise that the abdication of responsibility, the unquestioning obeying of commands (simply doing one's job), submitting to the fear of punishment, moral indifference, the closing of one's eyes to events or permitting oneself to be intoxicated, seduced or bought with personal advantages are all essential parts of the many-layered spiral of responsibility which makes largescale, systematic human rights violations possible in modern states. Only this realisation can create the possibility for the emergence of something new in South

Reference 122 - 0.01% Coverage

107 One of the reasons for this failure of emphasis is the fact that the greater part of the Commission's focus has been on what could be regarded as the exceptional - on gross violations of human rights rather than the more mundane but nonetheless traumatising dimensions of apartheid life that affected every single black South African. The killers of Vlakplaas have horrified the nation. The stories of a chain of shallow graves across the country, containing the remains of abducted activists who were brutalised, tortured and ultimately killed, have left many South Africans deeply shocked. The media has understandably focused on these events - labelling Eugene de Kock, the Vlakplaas commander, 'Prime Evil'. The vast majority of victims who either made statements to the Commission or who appeared at public hearings of the Human Rights Violations Committee to tell their stories of suffering simply did not receive the same level of public attention. Indeed, victims of those violations of human rights that were not included in the Commission's mandate received no individual public attention at all.

Reference 123 - 0.01% Coverage

109 A second reason for the insufficient focus on moral responsibility beyond the narrow, direct responsibility of specific perpetrators of gross human rights violations was the widespread failure fully to grasp the significance of individual victims' testimony before the Commission. Each story of suffering provided a penetrating window into the past, thereby contributing to a more complete picture of gross violations of human rights in South Africa. The nation must use these stories to sharpen its moral conscience and to ensure that, never again, will it gradually atrophy to the point where personal responsibility is abdicated. The challenge is to develop public awareness, to keep the memories alive, not only of gross violations of human rights, but of everyday life under apartheid. Only in this way can South Africans ensure that they do not again become complicit in the banality that leads, step by step, to the kinds of outrageous deeds that have left many 'good' South Africans feeling that they can never be expected, even indirectly,

Reference 124 - 0.01% Coverage

110 Thus, a key pillar of the bridge between a deeply divided past of "untold suffering and injustice" and a future "founded upon the recognition of human rights, democracy, peaceful co-existence, and development opportunities for all" is a wide acceptance of direct and indirect, individual and shared responsibility for past human rights violations.

Reference 125 - 0.01% Coverage

- (i) gross violations of human rights, including violations which were part of a systematic pattern of abuse;
- (ii) the nature, causes and extent of gross violations of human rights, including the antecedents, circumstances, factors, context, motives and perspectives which led to such violations;

Reference 126 - 0.01% Coverage

d determine what articles have been destroyed by any person in order to conceal violations of human rights or acts associated with a political objective;

Reference 127 - 0.01% Coverage

h make recommendations to the President with regard to the creation of institutions conducive to a stable and fair society and the institutional, administrative and legislative measures which should be taken or introduced in order to prevent the commission of violations of human rights.

Reference 128 - 0.01% Coverage

3 The Commission was required to consider cases that had occurred over a thirty-four year period, stretching from 1 March 1960 to 10 May 1994. In so doing, it found itself responsible for the examination of over 50 000 cases of gross violations of human rights. As described in the Mandate chapter, these violations were narrowly defined in the Act. This means that numerous other violations of human rights – all heinous and, in their own way, ‘gross’, were not considered. It is in this context that this chapter will examine the ways in which the Commission chose to complete its work.

Reference 129 - 0.01% Coverage

8 The Act allowed for the appointment of additional committee members, other than commissioners, to serve on the Human Rights Violations and Reparation and Rehabilitation Committees. The Commission decided to appoint such members, not only to assist in discharging the functions and responsibilities of these committees, but also to ensure that their membership was representative in terms of race, gender and geographical origin. The Commission felt that it was important that the membership of the committees reflected the life experiences of all South Africans – black and white, men and women, urban and rural.

Reference 130 - 0.01% Coverage

11 As the early statements were received and analysed, it became clear that the initial protocol, developed before the Commission began its work, was inadequate. This may be attributed to two factors. First, the structuring of information gathered from long and complex narrative statements imposed some technical difficulties: narrative statements might contain information on gross violations of human rights which occurred on one or more occasions, at one or more places, to one or more victims and carried out by one or more perpetrators. As different kinds of evidence of varying degrees of detail and complexity were gathered, it became clear that there was a need to adjust and fine-tune the structure of the protocol in order to ensure that all necessary information was captured in a uniform manner.

12 Second, as the Human Rights Violations Committee and the Reparation and Rehabilitation Committee confronted various policy issues, it became clear that new and additional information would be required. For example, the Human Rights Violations Committee’s policy on the corroboration of victim statements set out a range of ‘corroborative pointers’¹ designed to assist in the process of finding whether or not a deponent was, in fact, a victim of a gross violation of human rights. The first draft of the protocol was not structured in a way that prompted victims to provide as many as these pointers as possible. As these new requirements were identified, the protocol evolved, with the result that the final version of the protocol, on which the majority of victim statements were captured, was the fifth version.

Reference 131 - 0.01% Coverage

1 ‘Corroborative pointers’ were pieces of information or evidence concerning a particular act or event which might assist the Human Rights Violations Committee in establishing that the information provided by victims in their statements was true.

Reference 132 - 0.01% Coverage

14 The Commission decided to establish an information management system to ensure that all information gathered from victims was captured, processed and corroborated according to a uniform methodology. This was viewed as essential in ensuring that the findings of the Human Rights Violations Committee were as rigorous and defensible as possible. The information management system prescribed that each statement received should be processed according to certain specified and consecutive steps - resulting in what was described as the Commission's 'information flow'. Seven major steps were involved: statement taking, registration, data processing, data capture, corroboration, regional 'pre-findings' and national findings. Each is discussed in detail below.

Reference 133 - 0.01% Coverage

15 The Commission employed trained statement takers and volunteers (called 'designated statement takers') from non-governmental organisations (NGOs), community-based organisations (CBOs), religious and civic organisations to take statements from deponents. The statement taking process served two different functions. First, it helped to ensure that information on gross violations of human rights was gathered from victims of these violations. Second, it served a therapeutic purpose in that it provided victims with an opportunity to speak about their suffering or that of their families to people who listened sympathetically and acknowledged their pain. The methodological difficulties of attempting to serve both functions in the statement taking process will be discussed in greater detail.

Reference 134 - 0.01% Coverage

c The third way in which the Commission solicited statements was through the designated statement taker programme.² This programme was launched by the Commission in order to extend its reach and to ensure that as many communities as possible were given the opportunity to make statements. The designated statement taker programme was funded by a foreign donor and involved training staff based in community organisations throughout the country to take statements on behalf of the Commission. The project increased the number of statements taken by the Commission by almost 50 per cent and allowed for a focus on victims in rural communities or those communities that had experienced a high incidence of human rights abuse. It also concentrated on communities in which the Commission did not hold hearings and in which, therefore, there may not have been knowledge about the Commission and its work. The local recruitment of statement takers meant, too, that victims could tell their stories in their mother tongue, often to people they knew, thereby enhancing the quality and reliability of the testimony and reassuring victims who felt apprehensive. Some, however, chose not to share intimate details with neighbours and others from their own communities – not least where differences between rival groups was a continuing factor.

Reference 135 - 0.01% Coverage

18 Each regional office employed a team of data processors who read and analysed the statements in order to identify each discrete violation of human rights mentioned in them. A statement might, for example, identify one or more victims, each of whom may have suffered one or more different violations of their human rights at different times in different places. The violations suffered by the victims were then categorised into one of the four violations types defined in the Act. Data processors also generated a brief narrative summary of

Reference 136 - 0.01% Coverage

19 The data processors identified the nature of each violation, its date and place, its consequences for the victim and the political context in which it occurred. They also noted the organisational affiliations of the victims and alleged perpetrators. Each violation of human rights was captured on the Commission's database as a separate act. This provided the basis for a powerful and sophisticated analysis of the data gathered. It allowed, for example, for an analysis of the number and kinds of violations suffered by each victim over a period, as well as an assessment of the categories of victims who experienced the largest number of violations over certain periods in time. This analytic capacity greatly enhanced the quality of the final report.

Reference 137 - 0.01% Coverage

22 In addition, regional researchers conducted literature searches and field trips in order to produce briefing documents on the political conflicts that had taken place in areas where gross violations of human rights had occurred. This allowed them to generate valuable background material and information on the political context in which the violations took place. This corroborative material and background research provided the commissioners with the additional information they needed to make their findings – establishing whether the allegations in the statements were, on a balance of probability, true.

Reference 138 - 0.01% Coverage

24 It is clear from the above that the corroboration of statements was an extremely difficult and time-consuming task. It was complicated by the large numbers of statements involved and because each statement, on average, referred to between two and three victims. The Human Rights Violations Committee was, as a result, faced with the task of corroborating over 50 000 individual cases. The enormity of this task cannot be overemphasised.

Reference 139 - 0.01% Coverage

25 The information taken from the statements, the corroborative material gathered by the investigators and the background research material provided by the researchers were presented on a regular basis to the Human Rights Violations Committee, which would then make 'pre-findings' at a regional level.

Reference 140 - 0.01% Coverage

32 The Commission gathered an enormous amount of important information and evidence at the hearings held by the Human Rights Violations Committee. There were five types of hearings.

Reference 141 - 0.01% Coverage

a The nature of abuse in the community or area: the Commission attempted to select a group of victims whose experiences represented the various forms of human rights abuse that had occurred in the area.

Reference 142 - 0.01% Coverage

36 In many respects, the victim hearings constituted the core of the Commission's work. While some victims chose, for a variety of reasons, not to appear before the Commission, the hearings gave victims an

opportunity to testify publicly about the violations of their rights and served as a powerful medium of education for society at large. The hearings generated public discussion around a spectrum of fundamental issues, such as complicity in human rights abuse and what steps should be taken to ensure that such abuse does not recur in the future. They also exposed communities who did not know, or had not wanted to know, to the truth about human rights abuse to the reality of suffering which had occurred during the period under review.

Reference 143 - 0.01% Coverage

37 In the event hearings, the Commission focused not on the individual experiences of victims, but on specific events in which gross violations of human rights occurred. These hearings explored the context in which a specific event occurred and typically involved testimony not only from victims but also from alleged perpetrators and experts with specific knowledge about the event or issues related to it. These hearings were selected as 'window cases' and aimed to provide detailed insights into particular incidents that were representative of broader patterns of abuse. Event hearings also provided affected communities and their representatives with the opportunity to speak about collective experiences of abuse, thus offering a more global perspective of human rights abuse. The following event hearings took place:

Reference 144 - 0.01% Coverage

38 Special hearings sought to identify patterns of abuse experienced by individuals and groups. An attempt was made to elicit the experiences of vulnerable persons who had suffered gross human rights violations. Specific attention was given to the prevention of future human rights violations and recommendations to promote reconciliation. Hearings were held on:

Reference 145 - 0.01% Coverage

39 At the institutional hearings, the Commission sought to receive evidence from various professions, institutions and organisations about the role they had played in committing, resisting or facilitating human rights abuse. The purpose of these hearings was to enrich the Commission's analysis of human rights abuse by

Reference 146 - 0.01% Coverage

exploring how various social institutions contributed to the conflicts of the past. The hearings often provoked considerable public debate about, for example, the role of the legal and medical professions during the Commission's mandate period. They also triggered or encouraged introspection and self-analysis by these professions and organisations. In addition, they helped the Commission to formulate some of the recommendations made to the President concerning legislative, institutional and administrative measures that should be taken to prevent future human rights abuse. Institutions were often criticised for failing to acknowledge adequately their complicity in gross human rights violations. In certain instances, however, institutional hearings served as a catalyst for professions and organisations themselves, triggering transformation from within.

Reference 147 - 0.01% Coverage

41 The Commission provided political parties with an opportunity to offer their perspectives on the causes and nature of the conflicts of the past, together with an account of their involvement in and/or

responsibility for gross violations of human rights. The hearings examined as carefully as possible the question of accountability for gross violations of human rights. In most instances, these hearings consisted of two phases. In the first phase, the Commission allowed the political parties to make their submissions and asked questions only for purposes of clarification. In the second phase, the Commission put substantive questions to the various parties, based on a detailed study of their submissions and of evidence gathered through investigations and research.

Reference 148 - 0.01% Coverage

46 In addition to assisting with hearings, undertaking corroborative work and supporting the work of the Amnesty Committee, the Investigation Unit had other functions to perform. One of these was to embark on proactive investigations into a range of strategic areas relating to the mandate of the Commission. These investigations focused on various themes, patterns and trends relating to human rights abuse

Reference 149 - 0.01% Coverage

49 The Research Department began its work by generating regional chronologies of human rights abuses that had occurred during the Commission's mandate period. These chronologies were used to isolate fifteen strategic research themes which helped to explain the causes and nature of various modalities of human rights abuse. These themes were constantly revised and updated as more information and evidence was placed before the Commission. The Research Department then analysed each statement received by the Commission and categorised it according to theme. This helped ensure that any explanation or analysis generated by the Commission would be based primarily on information gathered by the Commission itself.

Reference 150 - 0.01% Coverage

51 This research and analysis on the nature and genesis of human rights abuse in various regions or according to various themes also assisted the Human Rights Violations Committee in making findings on the statements it received. Similarly, the work of the Research Department provided valuable background material which assisted the Amnesty Committee in its deliberations. The Research Department, guided by the work of the Commission as a whole, also facilitated the drafting of the various chapters of the Commission's final report and managed the editing and production process.

Reference 151 - 0.01% Coverage

52 In terms of section 20(c) of the Act, one of the preconditions for the granting of amnesty was that the applicant made full disclosure of all relevant facts. The amnesty process was thus one of the most important sources of information regarding gross violations of human rights. In particular, the amnesty process provided vital insights into the motives and perspectives of perpetrators and offered important evidence regarding the authorisation of gross violations of human rights.

Reference 152 - 0.01% Coverage

55 Once this classification was complete, each sub-category was further analysed in order to identify key themes common to each. These themes, together with a list of amnesty applications relevant to each of them, were made available to the Research Department and Investigation Unit to assist them in their work. This process allowed for the information contained in amnesty applications to be considered during

the process of drafting relevant chapters of the final report. For example, researchers responsible for providing an account of the role played by the Azanian Peoples Liberation Army (APLA) in the commission of gross violations of human rights were able to refer to all amnesty applications

Reference 153 - 0.01% Coverage

56 This allowed the evidence collected from sources such as victim statements and section 29 enquiries to be integrated with the information contained in amnesty applications. The result of this process of gathering information from a range of sources and representing a range of perspectives was a more nuanced and sophisticated analysis of the nature, causes and extent of gross violations of human rights.

Reference 154 - 0.01% Coverage

a In accordance with section 4(b), the Commission would receive human rights violations statements from tens of thousands of individual deponents and from thousands of amnesty applicants.

Reference 155 - 0.01% Coverage

b describe the "nature ... and extent" of gross human rights violations (4(a)(ii)).⁸ The 'nature' of violations means the types of violations that were committed and in what ways; the 'extent' of violations was interpreted to mean how many violations were committed.

Reference 156 - 0.01% Coverage

The structural complexity of human rights violations

Reference 157 - 0.01% Coverage

8 Section 1(ix) of the Act defines a gross violation of human rights as killing, abduction, torture, or severe ill treatment. 9 See Patrick Ball, *Who Did What to Whom? Planning and Implementing a Large Scale Human Rights Data Project*. Washington, DC: AAAS. 1996, especially chapter 2, for a detailed discussion of the biases introduced by oversimplifying assumptions in human rights information management systems.

Reference 158 - 0.01% Coverage

8 The Commission drew on a variety of prior human rights data projects in order to design its database. These included the experience of the Haitian National Commission for Truth and Justice and the United Nations Commission for Truth in El Salvador - at the time, the only two truth commissions to have undertaken quantitative analysis of human rights violation data on the scale proposed by the South African Commission. Consultants from the Investigative Task Unit (a special unit established by the Minister of Safety and Security to investigate alleged hit

Reference 159 - 0.01% Coverage

squad activities in KwaZulu-Natal) and non-government organisations (NGOs) that had participated in the Human Rights Documentation Project also made suggestions on the information flow.

9 The instrument most extensively used by the Commission's Database Development Group was developed by representatives of six human rights NGOs with experience in the design of human rights

information systems.¹² Full evaluations of the Commission's information flow were conducted in September 1996 and April 1997¹³. In addition, numerous periodic office-specific or stage-specific evaluations were conducted.

Reference 160 - 0.01% Coverage

10 The Commission based its work on the assumption that objective¹⁴ knowledge about the social world in general, and about human rights violations in particular, is possible. Some analysts, in particular academic anthropologists, have questioned this assumption. Their criticism is directed primarily at the decontextualised nature of human rights reporting in anecdotal presentations or legal casework, but it is equally - possibly even more - relevant to quantitative analysis.

11 In brief, analysts such as Richard A Wilson are concerned that "violence, like any other social process, is expressed and interpreted according to sets of metaphors about the nature of power, gender relations, and human bodies."¹⁵ Any report of political violence must place the violence within the relevant web of social networks and contingent cultural meanings. However, Wilson does not conclude that objectified or universalised human rights analysis is somehow fundamentally meaningless; only that, on its own, legalistic or quantitative analysis is inadequate. He thus calls for a blend of methods at different levels to explain human rights violations.

12 Patrick Ball, Ricardo Cifuentes, Judith Dueck, Romilly Gregory, Daniel Salcedo, and Carlos Saldarriaga, 'A Definition of Database Design Standards for Human Rights Agencies.' American Association for the Advancement of Science/HURIDOCS. November 1994. 13 See Patrick Ball, 'Evaluation of Commission's Information Flow and Database, with Recommendations', Memorandum to the Commission, 9 September 1996, 34 pp; see also Ball, 'Statistical Analysis and Other Research Using the Commission Database: Notes for Analysts', Memorandum to the Commission, 11 April 1997. 14 Or at least knowledge that is inter-subjectively reliable, that is, knowledge on which the involved actors can agree is held in common between them. This is a weaker assumption than objective knowledge but it has the same practical effect. 15 Richard A. Wilson, 'Representing Human Rights Violations: Social Contexts and Subjectivities', pp. 134-160 in Human Rights, Culture, and Context, Richard A. Wilson, Ed. London: Pluto P. 1997: p. 148.

Reference 161 - 0.01% Coverage

16 Hans Gerth and C. Wright Mills, 'Methods of Social Science', in From Max Weber: Essays in Sociology. Oxford UP. 1946: p. 59. This paragraph and the following one follow Gerth and Mills' description of Weber's methodology. 17 See Gerth and Mills, pp. 59-60. 18 See Richard Claude and Thomas Jabine, 'Exploring Human Rights Issues with Statistics', pp 5-34; Robert Goldstein, 'The Limitations of Using Quantitative Data in Studying Human Rights Abuses', pp 35-61; George Lopez and Michael Stohl, 'Problems of Concept Measurement in the Study of Human Rights', pp 216-234 in Human Rights and Statistics: Getting the Record Straight, edited by Thomas Jabine and Richard Claude, University of Pennsylvania, 1992. See also the pioneering work of Judith Dueck and Aida Maria Noval, HURIDOCS Standard Formats Supporting Documents, Geneva: HURIDOCS, 1993 and Ball, 1996.

Reference 162 - 0.01% Coverage

17 Human rights data are almost never taken from probabilistic samples. Instead, people decide for themselves if they will make statements. This 'self-selection' of the sample introduces a number of factors that must be taken into account when interpreting findings:²⁰

Reference 163 - 0.01% Coverage

18 Since the Commission's sample was not a probabilistic sample, it was not possible to use the data to calculate how many violations, in total, took place in South Africa. Without knowing what proportion of all potential victims actually came to the Commission, the overall total cannot be estimated. What is known is that there were at least 21 000 gross violations of human rights.

19 Statistical projection of findings and analysis from a sample to the society at large can only be made if a probabilistic sample is used - one that is drawn randomly from the population so that every member of the population has an equal or fixed chance of being included in the sample. 20 See, for example, Ignacio Cano, 'Evaluating Human Rights Violations', pp 221-233 in *Evaluation for the 21st Century*. Edited by Eleanor Chelinsky and William Standish. Beverly Hills, CA: Sage Press 1997.

Reference 164 - 0.01% Coverage

19 However, the data gathered from the human rights violations statements do permit the kinds of analyses to which they are subjected in the various chapters of this report. It is important to note that the Commission's data were based on corroborated findings. This means that, at a minimum, these violations (if not many more) definitely happened in these places at these times. Furthermore, none of the conclusions in the Commission report are based on quantitative data alone; in each case, the quantitative data is linked to the accounts of contemporary journalists, histories of the various regions, and analyses of reported situations by NGO human rights groups.

Reference 165 - 0.01% Coverage

1 In order to establish as complete a picture as possible of the conflicts of the past, the Human Rights Violations Committee focused the bulk of its energy and resources on gathering and processing statements from deponents²¹. The corroborated allegations of gross violations of human rights contained in these 21 000 statements form the basis for the Human Rights Violations Committee's conclusions about the nature of the conflict.

Reference 166 - 0.01% Coverage

3 The methodology of the statement-taking process was such that deponents came to the Commission of their own volition. The Commission did not carry out a survey of human rights violations in the sense of a conventional 'market research' approach using a stratified random sample, nor did it carry out a census of violations. The information gathered came from those who wished to tell the Commission about the gross violations of human rights they had experienced. In other words, the sample was self-selecting²².

Reference 167 - 0.01% Coverage

21 The term 'deponent' is used to describe those who made a statement to the Human Rights Violation Committee of the Commission. They may or may not be victims of a gross violation of human rights themselves. 22 See Appendix 1 to this chapter: Methodology and the Information Management System.

Reference 168 - 0.01% Coverage

7 In general, as might be expected, the more populous the province, the larger the number of statements taken. However, certain provinces had experienced greater political instability than others, resulting in more violations of human rights and a consequently larger number of deponents.

Reference 169 - 0.01% Coverage

10 The rate of statement taking in each province was also affected by the ability of the Commission to reach deponents. The very high rate of statements taken in the Northern Cape was the result of intensive statement taking in an under-populated province, rather than an above-average number of people who suffered gross violations of human rights.

Reference 170 - 0.01% Coverage

11 Statements were taken from deponents over a period of two years - from the moment the Commission began work until the cut-off date for human rights violations statements in December 1997. The graph below shows the progress made by the Commission in taking statements.

Reference 171 - 0.01% Coverage

14 If the conflicts of the past had affected the population groups equally, one would expect that the numbers of deponents in each category would be proportionate to the national population. However, the table shows that the number of deponents who described themselves as African is much higher than would be expected from the population statistics. It was, indeed, overwhelmingly Africans who came to tell the Commission about gross violations of human rights.

Reference 172 - 0.01% Coverage

21 Deponents came to the Commission to tell about gross violations of human rights that had been experienced, either by themselves or by someone close to them. In total, the 21 000 statements made to the Commission contained nearly 38 000 allegations of gross violations of human rights³², of which nearly 10 000 were killings.

Reference 173 - 0.01% Coverage

33 Non-fatal human rights violations include attempted killings, torture, severe ill treatment and abductions. 34 The large numbers of victims of unspecified sex are a consequence of the time-pressures on Commission staff to load the data onto the computer systems. With more time and resources, this data can be improved. However, it is very likely that the proportion of men to women victims amongst those of unspecified sex is the same as that where the sex is known, so the overall results are not likely to be significantly affected by the unknowns.

Reference 174 - 0.01% Coverage

28 The Commission did not try to carry out a census of violations of human rights. It had neither the time nor the resources to do so. Consequently, we will never know exactly how many people suffered during the mandate period.

29 Instead, the Commission appealed to South Africans to come forward to tell the Human Rights Violation Committee what had happened to them. By the end of the Commission's lifespan, 21 000 people had come forward, women and men, old and young, and told the Commission about nearly 38 000 gross violations of human rights. In the process, the broad outlines of the past emerged with

undeniable clarity. Ninety percent of those who came forward were black. Most of them were women. The greatest number of these approached the Commission on behalf of dead men to whom they were related.

Reference 175 - 0.01% Coverage

14 The court held that the postamble permitted the granting of an amnesty for any civil liability to the state, entitling Parliament to adopt a wide concept of reparations. This would allow the state to decide on proper reparations for victims of past abuses, having regard to competing demands on the limited resources of the state. Further, Parliament was authorised to provide for individualised and nuanced reparations that took into account the claims of all victims, rather than preserving state liability for provable and unprescribed delictual claims only. In this regard, Judge Mahomed noted, the families of those whose fundamental human rights were invaded by torture and abuse were not the only victims who have endured “untold suffering and injustice in consequence of the crass inhumanity of apartheid which so many have had to endure for so long”. Indeed:

Reference 176 - 0.01% Coverage

concept of “reparation”, which would allow the state to take into account the competing claims on its resources but, at the same time, to have regard to the “untold suffering” of individuals and families whose fundamental human rights had been invaded during the conflict of the past (para 45).

Reference 177 - 0.01% Coverage

(c) it appears that any person may have suffered harm as a result of a gross violation of human rights, the Commission shall, if such person is available, afford him or her an opportunity to submit representations to the Commission within a specified time with regard to the matter under consideration or to give evidence at a hearing of the Commission.

22 The Commission took statements from witnesses (potential victims) about gross human rights violations. In the event that a statement contained allegations implicating persons to their detriment, the Act envisaged that the Commission should give the implicated person an opportunity to address it on the issue, either in writing or orally.

Reference 178 - 0.01% Coverage

39 The court held that, in the context of its objectives, functions, powers and the limited time frame within which it had to complete its work, the Commission was not obliged to give prior notice to any person who might be implicated in a human rights violation hearing. However, if and when the Commission contemplated making a decision that might be detrimental to an implicated person after a hearing, that person should be granted an opportunity to submit representations or give evidence to the Commission. Moreover, at that time, the Commission should

Reference 179 - 0.01% Coverage

48 The implications of the court’s decision were that the Commission was now compelled to give prior notice to alleged perpetrators of human rights violations before evidence was heard publicly, and to provide them with sufficient information about the allegations against them to enable them to make representations.

Reference 180 - 0.01% Coverage

50 Following the court ruling, the Commission adopted the procedure of sending section 30(2) notices to alleged perpetrators twenty-one clear calendar days in advance of the hearings. Notices were accompanied by all documentation necessary to provide the alleged perpetrator with sufficient detail of the substance of the allegations against him or her. The procedures applied to notices for human rights violations hearings, section 29 investigative hearings and amnesty hearings.

Reference 181 - 0.01% Coverage

Furthermore, it does not seem to me that the Constitutional right to procedurally fair administrative action entitles the Applicant to the relief sought in this application. It seems to me that it is inappropriate to equate the hearings of the Commission's Committee on Human Rights Violations with an administrative or quasi-judicial hearing. The Act envisages rather a procedure which is unique and which, in the national interest, is designed to investigate and establish as complete a picture as possible of the nature causes and extent of gross violations of human rights committed during the relevant period.

Reference 182 - 0.01% Coverage

62 Commenting on the second ground relied upon by the Applicant (the written and unequivocal undertaking), Judge Buchanan noted that, in terms of section 30 (1), the Act provided for the Commission to establish a prescribed procedure. Although it appeared that the Commission had determined no specific procedure in respect of the Committee on Human Rights Violations, in this particular case the letter of the Commission dated 6 May 1996 indicated that the Commission had bound itself to a procedure in respect of the applicant.

Reference 183 - 0.01% Coverage

66 Nieuwoudt alleged that, at the human rights violations hearing held in New Brighton on 21 May, the Commission had allowed evidence to be given by Mr Mlandile

Reference 184 - 0.01% Coverage

b The Commission would take all reasonable steps in good faith to furnish Nieuwoudt with any witness statement in its possession which might implicate him in the violation of human rights prior to any such evidence being led, together with information about when and where such evidence was to be heard.

Reference 185 - 0.01% Coverage

d The Amnesty Committee could not have satisfied itself that there was no need for a hearing, since it did not enquire whether these offences involved gross violations of human rights as specified by the Act.

Reference 186 - 0.01% Coverage

by the [Truth and Reconciliation Commission] are also considered to be probably in violation of the constitutionally-guaranteed human rights of the SADF members concerned as described in chapter 2 sections 9 and 23 of Act 108 of 1996. The disregard which resultantly (sic) developed in the minds of

members of the former SADF undermines the overall mission of the [Truth and Reconciliation Commission] to promote reconciliation and national unity.

Reference 187 - 0.01% Coverage

130 The Commission sought a further order compelling Dr Basson to appear before the Commission's Human Rights Violations Committee on Wednesday, 29 July 1998, and to answer all questions lawfully put to him.

131 Dr Basson's application had been set down by way of normal motion court rules. If the Commission had not asked that the matter be dealt with as a matter of urgency, it would have been heard after the date of expiry of the Commission's Human Rights Violations Committee, the Committee competent to hear the evidence.

Reference 188 - 0.01% Coverage

133 On the 25 July 1998, Judge Hlope of the Cape High Court dismissed Dr Basson's application with costs and granted the Commission's counter application. Judge Hlope ordered Dr Basson to appear before the Human Rights Violations Committee on 29 July 1998 and to answer all questions lawfully put to him.

Reference 189 - 0.01% Coverage

2 The focus of the Commission's enquiry into the destruction of records must be considered within the framework of its need to access documents pertaining to gross human rights violations in the period under review. While an enormous number of records was destroyed, not least as South Africa moved towards democratic rule, many crucial documents survived. These included Cabinet minutes and minutes of the State Security Council. Notable amongst those that could not be traced were the records of the National Security Management System (NSMS), a substructure of the State Security Council.

Reference 190 - 0.01% Coverage

7 Although, initially, the quest for files related to particular incidents, it became clear that a more systematic scrutiny of SANDF, SAPS, NIA and SASS files was necessary for purposes of general research and investigation. It also became apparent that the nature and extent of the destruction of documentation for purposes of concealing violations of human rights required further investigation. The Harms and Goldstone commissions of enquiry and the Goniwe inquest had already revealed substantial evidence of this phenomenon and the Currin court case, discussed later in this chapter, indicated that there had been ongoing destruction of documentation. An investigation into the destruction of documents was, in any case, required in terms of the Act.

Reference 191 - 0.01% Coverage

11 The Act specifically required that the Commission "determine what articles have been destroyed by any person in order to conceal violations of human rights or acts associated with a political objective" (section 4(d)). Sections 29 and 32 of the Act gave the Commission wide-ranging powers (to secure, examine and copy articles; to gain entrance to, inspect and search premises; and to seize and remove articles) of vital importance to fulfilling this mandate.

Reference 192 - 0.01% Coverage

13 Given the constraints imposed by time and resources, such a task was not feasible and more narrowly defined parameters had to be identified. Therefore, the investigation was limited to the destruction of state records for a number of reasons. First, their status as public records accords them a high level of public interest. Second, statutory regulation of record keeping by state structures provides a comprehensive measure against which to judge the management of records, including their authorised and unauthorised destruction. Third, state records constitute by far the largest coherently defined aggregate of records. Fourth, scrutiny of state records offers a high level of insight into the system that gave rise to so many of the gross human rights violations under the spotlight of the Commission. And finally, the destruction of state documentation probably did more to undermine the investigative work of the Commission than any other single factor.

Reference 193 - 0.01% Coverage

20 Through this process, researchers were able to identify 'hot spots': that is, structures that had attracted a number of allegations that they had destroyed records without authorisation from the SAS. These 'hot spots', all within the security establishment, were thoroughly researched and subjected to the scrutiny of joint investigative teams, composed of representatives of the structure under investigation, the Commission, the Human Rights Commission and the National Archives³. The destruction of records by the following bodies was investigated:

Reference 194 - 0.01% Coverage

41 SAS disputed the legal validity of the circular, but its attempts proved futile. However, when the resultant mass destruction of records was reported in the media, Mr Brian Currin, national director of Lawyers for Human Rights, challenged the circular's validity in the Supreme Court. He identified the respondents as the State President, the Minister of National Education, the Director of Archives and the Director-General of NIS. In his application, Currin argued that state legal opinions 299/1991 and 308/1991 were "wrong", and that the nature of 'sensitive' records, including classified material, did not exclude them from the operation of the Archives Act. On 27 September 1993, all the parties reached an agreement that, in future, no state records would be dealt with otherwise than in terms of the Act, "simply by virtue of the fact that they are classified, or they are classified into a category denoting some degree of confidentiality".¹²

Reference 195 - 0.01% Coverage

46 In order to enquire into the destruction of records, the Commission appointed a series of joint investigative teams to conduct probes into the various structures. In order to ensure optimum professionalism and impartiality, the Commission proposed in each case that, in addition to its own staff, personnel from the Human Rights Commission, the National Archives and representatives of the

Reference 196 - 0.01% Coverage

17 The composition of each investigative team was unique. However, Professor Charles Villa-Vicencio (Commission) and Mr Verne Harris (National Archives) served on all the teams. Jody Kollapen (Human Rights Commission) and Mr Arthur Fraser (Commission) also served on several investigative teams. Additional members of the Commission's research department, as well as outside consultants to the

research department, all of whom underwent the normal 'top secret' security clearance, were on several occasions brought in to assist in the scrutiny of records. 18 The investigations conducted both by the teams in the areas mentioned, as well as in the more wide-ranging initiative by the National Commissioner of the SAPS, uncovered a number of files that had not been destroyed. These files are described later in this report.

Reference 197 - 0.01% Coverage

93 By May 1994, a massive deletion of state documentary memory within the security establishment had been achieved. To what extent the systematic destruction was co-ordinated, and the question of whether or not it was sanctioned by Cabinet in its preliminary phase, is unclear. However, as recounted earlier, by 1993 Cabinet was both aware of the phenomenon and had authorised its expansion to involve all state offices. The motivation for this purging of official memory was clearly to prevent certain categories of record falling into the hands of the incoming government. The apartheid state was determined in this way to sanitise its image and protect its intelligence sources. It was also apparently intent on eliminating evidence of gross human rights violations. In this regard, the security establishment had most cause to destroy records.

Reference 198 - 0.01% Coverage

b When SAS staff became aware of the Security Secretariat's 1993 circular concerning the destruction of classified records, and secured evidence of its implementation in government offices, they pushed for an urgent intervention. When the Director of Archives failed to do so, one of these staff members is reported to have leaked the circular first to the press and then to Mr Brian Currin of Lawyers for Human Rights.²⁹

Reference 199 - 0.01% Coverage

106 Clearly, the work of the Commission suffered as a result. Numerous investigations of gross human rights violations were hampered by the absence of documentation. Ultimately, of course, all South Africans have suffered the consequences - all are victims of the apartheid state's attempted imposition of a selective amnesia.

Reference 200 - 0.01% Coverage

15 Through its regional offices, the Commission also entered into co-operative relationships and working partnerships with human rights non-governmental organisations (NGOs), faith communities and related grassroots and community-

Reference 201 - 0.01% Coverage

a developed strategic working partnerships with human rights and other community-based organisations;

Reference 202 - 0.01% Coverage

b Investigative work, including corroboration, human rights violations-related work, amnesty applications-related work, special investigations, disappearances and exhumations.

Reference 203 - 0.01% Coverage

i Findings on gross human rights violations. j Victim status and enquiries.

Reference 204 - 0.01% Coverage

alleged offenders. Within reasonable bounds, a Commission must respect the confidentiality of those who approach it, while using the media as a means to build and consolidate the new culture of human rights. This requires the media to show respect, professionalism and responsible journalism.

Reference 205 - 0.01% Coverage

64 Given the depth and breadth of its work, the Commission realised early in its life that it would never have sufficient capacity to allow it to tackle its work and complete its mandate. Hence, in order to advance its causes, it established strategic alliances and partnerships with international donors and local human rights and other NGOs of repute.

65 Through partner NGOs, the Commission was able to reach out to a wider spectrum of both potential and declared victims of gross human rights violations. Through international donors, the Commission was able to strengthen its operational capacities.

Reference 206 - 0.01% Coverage

69 The Commission generated a range of national and international debates on human rights issues. The success of the South African transition is dependent on the continuation of these debates.

Reference 207 - 0.01% Coverage

a 'hearable matters' (those applications involving gross human rights violations which required a public hearing in terms of the Act);

b 'chamber matters' (applications involving violations of human rights which were not 'gross' as defined by the Act);

Reference 208 - 0.01% Coverage

21 This was the quality control stage. One of the following routes would be followed. Incomplete applications were referred back to the analyst with further instructions. Completed applications were forwarded to the Committee by different routes. If the application did not involve a gross human rights violation and a public hearing was, therefore, not required, it was referred directly to the Committee which dealt with it in chambers. If a completed application involved a gross human rights violation, a public hearing was held. In the latter case, the application was scheduled for a hearing (in consultation with the legal representatives of the applicants, implicated persons and victims) and allocated to an evidence leader for preparation and finalisation.

Reference 209 - 0.01% Coverage

Human Rights Violations Committee

Reference 210 - 0.01% Coverage

1 The duties and functions of the Human Rights Violations Committee were clearly stipulated in section 14 of the Promotion of National Unity and Reconciliation Act (the Act). With reference to gross violations of human rights, the Committee was mandated, amongst other things, to enquire into systematic patterns of abuse, to attempt to identify motives and perspectives, to establish the identity of individual and institutional perpetrators, to find whether violations were the result of deliberate planning on the part of the state or liberation movements and to designate accountability, political or otherwise, for gross human rights violations.

Reference 211 - 0.01% Coverage

2 The Human Rights Violations Committee was made up of commissioners and committee members. In accordance with section 13(a) and (b) of the Act, the following commissioners were appointed to serve on the Human Rights Violations Committee. The regional offices in which they were located are indicated.

Reference 212 - 0.01% Coverage

1 Reassigned to and appointed as Amnesty Committee member in November 1997. VOLUME 1 CHAPTER 10 Human Rights Violations Committee

Reference 213 - 0.01% Coverage

3 In accordance with section 13(c), a further ten persons were appointed as Human Rights Violations Committee members.³ These were:

Reference 214 - 0.01% Coverage

4 An executive secretary was appointed to the Human Rights Violations Committee. ■ MODUS OPERANDI

Reference 215 - 0.01% Coverage

6 The Human Rights Violations Committee Findings Task Group, which included the vice-chairpersons, the executive secretary and one representative from each region (either a commissioner or committee member), met prior to each national meeting to make policy recommendations regarding the findings process and to report on regional pre-findings. Towards the end of the process, a representative from the Reparation and Rehabilitation Committee joined the

Reference 216 - 0.01% Coverage

VOLUME 1 CHAPTER 10 Human Rights Violations Committee PAGE 278

Reference 217 - 0.01% Coverage

7 While the Act outlined certain statutory obligations for the Human Rights Violations Committee, it gave it the latitude to develop its own unique operational procedures. Inevitably, a primary focus of the regular, national business meetings was to provide an operational policy framework for work in progress and anticipated work, processes and procedures. As a result, the development of policies that would govern the work of the Human Rights Violations Committee was both reactive and proactive. It was reactive in

the sense that the experience of gross violations of human rights differed from region to region. It was proactive insofar as one could anticipate emerging processes. Policy formulation was thus a dynamic context-driven process that tried to be sensitive to regional dynamics within a national operating framework.⁸

8 The evolving methodological framework was comprehensive, ranging from the development of regionally sensitive policy on the gathering, processing and interpretation of data on gross human rights violations to mundane operational considerations such as the timing of business meetings.

9 The work of the Human Rights Violations Committee was extensively supported by the Investigation Unit, especially concerning the pre-findings and findings process. The Research Department also contributed by establishing the political context of the violations alleged by victims. It also provided an analytical capacity to enquire into the systematic patterns of abuse and the motives and perspectives that led to gross human rights violations.

Reference 218 - 0.01% Coverage

10 Many of the operational activities of the Commission were driven by the need of the Human Rights Violations Committee to fulfil the terms of its mandate. Areas of operational policy included the following:

Reference 219 - 0.01% Coverage

8 See Volume One, Methodology and Process. VOLUME 1 CHAPTER 10 Human Rights Violations Committee

Reference 220 - 0.01% Coverage

9 See this volume, Administrative Report of the Safety and Security Department. VOLUME 1 CHAPTER 10 Human Rights Violations Committee

Reference 221 - 0.01% Coverage

a women as subjects of gross human rights violations b youth and children c Caprivi trainees in KwaZulu-Natal d Moutse/KwaNdebele incorporation conflict e Soweto 1976 f the killing of the 'Guguletu Seven' g the 'Bisho massacre' h the 'Seven Day War' in KwaShange/Imbali in 1990 i the 'Trojan horse' incident (Athlone, Cape Town) j the issue of compulsory military service

Reference 222 - 0.01% Coverage

VOLUME 1 CHAPTER 10 Human Rights Violations Committee PAGE 281

Reference 223 - 0.01% Coverage

c designing and developing a database management system that would serve the analytical needs of the Commission, and in particular the Human Rights Violations Committee;

Reference 224 - 0.01% Coverage

17 The activities of the Human Rights Violations Committee, namely the hosting of public victim hearings and the not-so-public processing of victim statements by the information management system, took place within the policy framework.

VOLUME 1 CHAPTER 10 Human Rights Violations Committee PAGE 282

Reference 225 - 0.01% Coverage

18 The most visible activity of the Human Rights Violations Committee was its public victim hearings programme, which commenced on 15 April 1996 in East London. The rapid proliferation of public victim hearings necessitated the scheduling and streamlining of pre-hearings preparation. This required a number of steps, which included making information available in each area in which statements were to be taken, the logistics of statement taking, the briefing of statement takers, statement taking and follow-up visits after the hearings.

Reference 226 - 0.01% Coverage

20 In addition, an extraordinary number of operational considerations had to be taken into account when hosting the hearings. An important concern of the Human Rights Violations Committee was to ensure that the human and civil dignity of victims was restored by granting them an opportunity to relate their own accounts of violations (as emphasised in section 3(1)(c) of the Act). It was, therefore, incumbent on the Human Rights Violations Committee to make sure that the environment at the hearing was conducive to achieving these objectives. Two examples illustrate the kinds of sensitivities that were enshrined in the policy.

Reference 227 - 0.01% Coverage

VOLUME 1 CHAPTER 10 Human Rights Violations Committee PAGE 283

Reference 228 - 0.01% Coverage

24 The most time-consuming and costly (though invisible) activity of the Human Rights Violations Committee was the information gathering and processing operation, known as 'Infocom'.

25 The collection of data was done manually by trained statement takers who were required to deal sensitively with the person giving the statement. In many instances, the person testifying would be disclosing his or her experiences of gross human rights violations for the first time. It was also realised that 90 per cent of the victims coming to the Commission would not be appearing at a public hearing and that their experience of the Commission would be through making a statement to one of the Commission's statement takers. It was, therefore, important to ensure that statement takers were able both to act with empathy and to record accurately the stories told to them by victims.

Reference 229 - 0.01% Coverage

27 Statement taking needs to be seen against the broader backdrop of other information gathering processes: for example, section 29 investigative enquiries or the receiving of written submissions from political parties and others. The above discussion on the hosting of public victim hearings and processing of victim statements shows how the Human Rights Violations Committee had to use broad sensitivities in order to develop policy on what often seemed, at first glance, to be basic operational procedures.

VOLUME 1 CHAPTER 10 Human Rights Violations Committee PAGE 284

Reference 230 - 0.01% Coverage

a to consider matters referred to it by the Commission, the Human Rights Violations Committee and the Amnesty Committee;

Reference 231 - 0.01% Coverage

e to make recommendations on the creation of institutions conducive to a stable and fair society, and on the measures to be taken in order to prevent the commission of human rights violations.

Reference 232 - 0.01% Coverage

15 Many of the deponents had needs which could be met through government agencies such as clinics, hospitals and schools. However, access was often denied or payment levied where those seeking help did not pass the means test. As a result, the Commission approached Members of the Executive Councils³ in the provinces to negotiate concessions for Commission-related requests to support victims of gross human rights violations. A useful result of this exercise was the opportunity to assess the capacity of these state institutions to assist victims. This served to highlight, for example, the glaring disparity of services between rural and urban areas. The issue of such services forms part of the recommendations made to the President.

16 As reparations are to be granted by government to established victims of gross human rights violations, the Reparation and Rehabilitation Committee maintained a formal relationship with government through an inter-ministerial committee at Cabinet level⁴. The aim was to facilitate the discussion and adoption of the

Reference 233 - 0.01% Coverage

26 After the first round of human rights violations hearings in 1996, it became evident that there was a need for post-hearing follow-up. In some areas, the hearings opened up old conflicts that threatened stability in the community. It also became clear that the hearings did not themselves provide opportunities for reconciliation. The Reparation and Rehabilitation Committee therefore formulated a policy of arranging follow-up visits to help communities to:
a evaluate the impact of gross human rights violations;

Reference 234 - 0.01% Coverage

27 The Human Rights Violations and Amnesty Committees also referred information to the Reparation and Rehabilitation Committee. In addition, the Reparation and Rehabilitation Committee generated information through its own activities, such as briefers' reports, post-hearing follow-up visits and so on. The Committee established a task team whose role it was to recommend a national strategy to process such information.

Reference 235 - 0.01% Coverage

28 The Human Rights Violations Committee statement form included a section on the consequences of violations. People were asked about the emotional, medical and symbolic consequences of violations and the impact on their education and housing. They were also asked to articulate their expectations of the

Commission at an individual, community and national level. A coding frame was developed for data relating to reparation and rehabilitation and was integrated into the Commission’s information system. This assisted in the interpretation of deponents’ responses and hearings, and thus influenced policy development. Unfortunately, data captured in this manner were linked to the deponent and not to the victim. Thus, although the data provided useful indicators, they were not as accessible as they might otherwise have been.

Reference 236 - 0.01% Coverage

29 In order to evaluate the impact of gross human rights violations on people’s lives, the Research Department facilitated an investigation in two areas: first, identifying the consequences of gross human rights violations on individuals, families and communities, and second, assessing people’s expectations of the Commission. This research provided an empirical foundation for the chapter on the consequences of gross human rights violations contained elsewhere in the report.⁵ As the potential variables under study were limitless and both areas were extremely complex, that chapter provides a broad overview of these areas. It identifies patterns and trends, using illustrative case studies extracted from the statements and hearing transcripts, supplemented with statistics drawn from the database.

Reference 237 - 0.01% Coverage

10 The Commission’s own methodology³ had to be developed, and its decision to hold hearings in communities where gross violations of human rights had taken place required extensive travel requirements and logistic support.

Reference 238 - 0.01% Coverage

The following positions are still vacant:Secretary to the Human Rights Violations Committee Secretary to the Amnesty Committee

Reference 239 - 0.01% Coverage

1.2 The objectives of the Commission are to promote national unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past by establishing a complete picture of the causes, nature and extent of gross violations of human rights by conducting investigations and holding hearings; facilitating the granting of amnesty to persons who make full disclosure of all the relevant facts relating to these acts; establishing and making known the fate or whereabouts of victims and recommending reparation measures in respect of them; and compiling a report providing a comprehensive account of the activities and findings of the Commission.

Reference 240 - 0.01% Coverage

Secretary to the Human Rights Violations Committee

Reference 241 - 0.01% Coverage

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Reference 242 - 0.01% Coverage

8 The Commission's database was the backbone of the information flow. All human rights violations statements and amnesty applications were loaded onto the database.

Reference 243 - 0.01% Coverage

9 The database was designed and built from scratch by a small team consisting of consultants from Oracle Corporation, the information systems manager and a researcher. It was based on a design by a consultant from the American Association for the Advancement of Science, who specialises in the recording of human rights violations data. The design also drew on the work done by the Human Rights Documentation and Information System (Huridocs).

10 The database was designed on the assumption that any narrative description of human rights violations could be broken up into a series of time- and placespecific acts of violence, succinctly summed up in the phrase 'who did what to whom'. For example, an activist may have had his or her house burnt down, then been detained in solitary confinement before being subjected to electric shock treatment. These would be recorded as three separate violations - arson, detention and torture - as opposed to recording the incidents as a composite violation ('the harassment and torture of Mrs X').

Reference 244 - 0.01% Coverage

13 The central part of the database design was a tabular list called 'Acts', which recorded the actual substance of the violation: the victim, the place, the date and time, the nature of the violation and the human rights violation category into which it fell (for example, attempted killing, torture, abduction, severe illtreatment). Each violation committed by one or more perpetrators was recorded in a separate table called 'Perpetrators'. An act that could have been witnessed by one or more people was also recorded in the 'Witnesses' table.

Reference 245 - 0.01% Coverage

16 The database was the primary repository of data for all three of the Commission's standing committees. By integrating the data in this way, powerful cross-checks between amnesty information and human rights violations data was possible, while the identity of victims and details of the harm they suffered were immediately available to the Reparation and Rehabilitation Committee.

Reference 246 - 0.01% Coverage

b a civilian component consisting of investigative journalists, researchers, human rights lawyers and members of non-governmental organisations (NGOs)

Reference 247 - 0.01% Coverage

d an international component consisting of trained police personnel, information technology specialists (using Kortex and Analyst Notebook) and human rights lawyers.

Reference 248 - 0.01% Coverage

5 The Unit staff included: current and former members of the police, magistrates, former members of the National Intelligence Service, former journalists and researchers, advocates, attorneys, public prosecutors, human rights specialists (including NGO workers, monitors and researchers) and international specialists. Thus, the Unit had a broad range of skills and expertise at its disposal.

Reference 249 - 0.01% Coverage

11 In addition, it was decided at an early stage that the Investigation Unit's staff should comprise both formally trained investigators drawn from the SAPS and persons with other skills and expertise. It was felt that a 'civilian component' would provide not only a multi-disciplinary skills base, but would also lend a greater degree of credibility to the investigative process. This approach accorded with the Commission's overall commitment to be accessible and sensitive to the victims of gross human rights violations.

Reference 250 - 0.01% Coverage

35 By May 1996, a basic management framework and a number of internal strategic and operational policies were in place. In terms of these, the Investigation Unit was required to provide an investigative service to the Commission's committees (principally the Human Rights Violations and Amnesty Committees) and to initiate independent investigations as determined by the Commission.

Reference 251 - 0.01% Coverage

39 It became apparent that the vast majority of statements received by the Commission would need to be dealt with by the Human Rights Violations Committee outside of public hearings. As a consequence, a distinction was drawn between those statements that would require only a minimum level of investigation to establish the veracity of a claim and those that would require a more thorough investigation of the contents. The former would be dealt with by a process of 'low level corroboration', while the latter would form the subject of 'investigations'.

Reference 252 - 0.01% Coverage

45 By embarking on this strategy, the Unit was able to bring significant pressure to bear on potential amnesty applicants and thereby made significant breakthroughs in the Commission's understanding of the nature and extent of gross human rights violations committed during its mandate period.

Reference 253 - 0.01% Coverage

48 The third phase began after the amnesty deadline had passed. In August/ September 1997, the chief executive officer, assisted by the executive secretary of the Human Rights Violations Committee, drafted a report and the extent of the outstanding work was assessed. It was established that the committee had received more than 7 500 applications, and that more than 1 500 of those needed

Reference 254 - 0.01% Coverage

49 The Investigation Unit was under great pressure to ensure that its corroborative work could be completed. The Unit was operating under a policy injunction determined in August 1997 that resources should be allocated to two areas of work: corroboration of statements and amnesty-related investigations. All other work, including the 'special' human rights violations investigations, was brought to completion as rapidly as possible.

Reference 255 - 0.01% Coverage

51 At the same time, it was recognised that the de facto regional control of the corroboration teams represented the most efficient way of organising the regionally-based findings process. It was decided to formalise this situation by transferring management responsibility for the corroboration teams to the regional representatives of the Human Rights Violations Committee.

52 The Investigation Unit's national office was left with a residual function and was responsible for the analysis of information in conjunction with the Research and Information Departments. Provision was also made for the resurrection of a special investigations team, comprising ten investigators (including international experts), to complete outstanding investigations into human rights violations.

Reference 256 - 0.01% Coverage

53 The fourth phase involved the redeployment of twenty-four of the investigators to the Amnesty Committee with a view to adding value to 'hearable' amnesty applications. Six of the twenty-four investigators were assigned back into the Investigation Unit in order to complete the remaining investigations into human rights violations and special investigations. This phase was in line with the Commission's staff roll out and close down plans.

54 This phase also involved the redeployment of approximately sixty low level corroborators from the Investigation Unit to the Human Rights Violations Committee, appropriately spread between the four regional offices in line with the population density and demographics of the areas they covered.

Reference 257 - 0.01% Coverage

Human rights violations investigations

55 The Investigation Unit facilitated this activity on behalf of the Human Rights Violations Committee.

Reference 258 - 0.01% Coverage

56 Amnesty applications were co-ordinated from the national office in Cape Town with the units in the four regions. The co-ordinator liaised with and reported to the Amnesty Committee and channelled investigations to the appropriate regions. The co-ordinator was also responsible for perusing applications that might assist in the linking of applications, extracting applications which might help complete human rights violations investigations, and identifying general patterns which would not necessarily be apparent if applications were sent directly to the regions.

Reference 259 - 0.01% Coverage

59 It was envisaged that a small group of analysts could provide support to investigators engaged in fieldwork, and compile general, overall analyses of trends and patterns, for example, in gross human rights violations or in perpetrator or victim groupings.

Reference 260 - 0.01% Coverage

62 The purpose of the analysis function was to establish whether there were any patterns, trends or common features in the types of cases being referred to the Investigation Unit, and to provide cross-referencing and analysis which would serve as the basis for national feedback to regional units and the Research Department. Further, analysts had to explain how gross human rights violations occurred, who the perpetrators were and on what authority they had acted; they had to discover the identity and affiliations of the victims, and they also had to assess the consequences of these gross human rights violations.

Reference 261 - 0.01% Coverage

65 A group of analysts was engaged to examine documents, to assist investigations and to contribute to a broader understanding of specific events. They were most effective and efficient when there was a clear task coming from client departments, whether from the Human Rights Violations Committee, the Research Department or the Amnesty Committee. Basic documents used in this regard were reports from regional units; records from the Research Department, the Human Rights Violations Committee and the Amnesty Committee, and other documents, such as inquests and reports from the Goldstone Commission and the Harms Commission.

Reference 262 - 0.01% Coverage

67 One area of work that proved very valuable was statistical analysis based on the data available in the Commission's database. It represented one of the largest databases recording occurrences of gross human rights violations in the world. As such, it offered tremendous scope for analysis to determine patterns, trends and links between perpetrator groups and types of violations. This formed a significant part of the analysis function, notwithstanding the fact that it did not immediately assist the investigative process. In this way, the analysis function was able to play a broader support role within the Commission.

68 The analysis function served to identify prevailing trends and patterns of gross human rights violations based on case studies (the so-called 'window cases') and evaluate the

Reference 263 - 0.01% Coverage

correlation between political developments and gross human rights violations, if that could be established. The primary sources were the database, section 29 interviews, victim and perpetrator statements to the Commission, political party and other institutional and individual submissions, amnesty applications, investigation reports and research notes.

69 The aim of the analysis was to paint a broader picture of gross human rights violations both at the national and regional levels, establishing patterns such as types of abuses, levels of authority, methods used, institutions and personalities involved and links between events.

Reference 264 - 0.01% Coverage

73 There were, however, different understandings and conceptions as to what was meant by the term 'low-level' corroboration. It was not clear exactly what level of information the Commission needed in order to make a finding that a person was a victim of a gross human rights violation as described in the

Act. The initial development of some corroboration 'pointers' and training were introduced to overcome this problem.

Reference 265 - 0.01% Coverage

96 Relations were also maintained with numerous NGOs, human rights organisations and political parties with the purpose of obtaining access to information both to facilitate corroboration work and as part of an information-gathering strategy.

Reference 266 - 0.01% Coverage

Mr Nieuwoudt was a former member of the South African Police security forces. He applied to the High Court (Port Elizabeth) for an order interdicting the Commission from hearing public evidence that would implicate him in any human rights violation until and unless he had been given proper, reasonable and timeous notice. He also asked that the Commission be required to furnish him with copies of documents relevant to the incidents raised in the evidence. It was agreed, amongst other things, that the Commission would not allow the presentation of evidence implicating an applicant without prior notice being given to that applicant. The case was settled on 5 June 1996, and the application was withdrawn.

10 Gideon Nieuwoudt v the Truth and Reconciliation Commission and Others (Case No 1253/96). Mr Nieuwoudt brought contempt of court proceedings against the Commission and those commissioners who sat on the panel during the Human Rights Violations hearing in Port Elizabeth. He contended that the Commission was in contempt of the rule nisi obtained under case number 1136/96 (above). The case was settled to the satisfaction of both parties and the settlement was made an Order of Court³.

Reference 267 - 0.01% Coverage

3 The Commission agreed to give Mr Nieuwoudt the opportunity to respond as soon as was reasonably possible to any evidence given at a hearing that implicated him in any human rights violations. It also agreed to take all reasonable steps to forward to him statements that implicated him in human rights violations before evidence was heard, and to inform him when and where it would be heard. The Commission agreed to pay Mr Nieuwoudt's legal costs in the matter.

Reference 268 - 0.01% Coverage

In this case, a criminal charge was laid against former state president Mr PW Botha following his refusal to appear before the Human Rights Violations Committee. The matter was still pending at the time of reporting.

Reference 269 - 0.01% Coverage

1 From the outset, the Commission identified the mass media as critical in drawing all South Africans into the Commission process. It resolved, in particular, that one way of helping to restore the dignity of victims of violations of human rights - and of reporting to the nation such violations and victims - would be to promote maximum publicity for the Commission's activities, and in particular its hearings, by opening them fully to both broadcast and print media.

2 In addition, advance publicity was given in the media of workshops, public meetings, and opportunities for victims to make statements and of hearings (both human rights violations and amnesty hearings) which victims and members of the public could attend.

Reference 270 - 0.01% Coverage

6 Media liaison was made a high priority from the first meeting of the Commission on 16 December 1995. The volume of news which the Commission's activities promised made this essential. It was also clear that if the Commission could meet the demands of the media for newsworthy material, this would help it fulfil its mandate to report to the nation on human rights violations and allow it to do so on a continuous basis throughout the life of the Commission.

Reference 271 - 0.01% Coverage

a the right of victims of gross violations of human rights to early access to information;

Reference 272 - 0.01% Coverage

19 The Commission's decision to allow cameras in hearings was one of the most important factors in creating the high public profile it enjoyed. The Commission was not a court and did not intend to run its hearings like court hearings, particularly the hearings organised by the Human Rights Violations Committee. Still, the Commission sought to ensure that the hearings had the dignity and decorum of court proceedings. Courts in most parts of the world do not allow cameras to cover their proceedings, and members of the Amnesty Committee, in particular, shared the instinctive reservations of judges on this issue. Because of these concerns, the Commission sought guidance from broadcasters in the United States, Canada and the United Kingdom in the drawing up of guidelines for cameras in hearings. The Commission was particularly grateful to the BBC in London, supported financially by the British High Commission in South Africa, which sent the Commission a senior producer who had been involved in the making of documentary programmes on Scottish court cases. The Commission developed the guidelines with the assistance of broadcasters, and especially the BBC consultant. (It should be noted that, as people participating in hearings became more accustomed to the presence of cameras, the guidelines were relaxed in some instances.)

Reference 273 - 0.01% Coverage

27 Herdbuoys also produced a series of radio advertisements during 1996, comprising a generic Commission advertisement, an advertisement for the Human Rights

Reference 274 - 0.01% Coverage

c booklets on the Human Rights Violations Committee, the Reparation and Rehabilitation Committee and the Amnesty Committee, translated into all languages but published only in English as a result of budgetary constraints;

Reference 275 - 0.01% Coverage

this was scaled down to R6 million in the 1996/97 fiscal year and to R2 million in the 1997/98 fiscal year (excluding donor funding subsequently raised). The financial limits on communication initiatives led to, amongst other things, the consolidation of the Commission's Media and Communications Departments into one department. It also led to criticism, particularly from organisations and lobby groups representing the interests of victims who argued, understandably, that the Commission had done too little

to communicate directly with the public and with victims and survivors of human rights violations, particularly in South Africa's remote areas.

Reference 276 - 0.01% Coverage

6 Support for witnesses at human rights violations hearings was the most visible part of the work undertaken by the Mental Health Unit. The public perception was of a briefer giving solace to a witness who had found the process of giving testimony deeply upsetting. This essentially 'snap shot' perception gave an impression of short-term interest and solace on the part of the Commission and did not reflect the interventions made by the Commission both before and after the hearings.

Reference 277 - 0.01% Coverage

12 Three kinds of people made statements: direct victims, family members and witnesses. Each approached the Commission for a range of different reasons. All imagined there would be some benefit in doing so. People's reasons for participating included: contributing to national reconciliation, finding out why family members had disappeared, requesting financial assistance to pay for expenses incurred as a result of human rights violations, and demanding that the perpetrator pay or account to the public in person.

Reference 278 - 0.01% Coverage

19 In its endeavour to capture the experience of the individual through personal testimony, the Commission often could not gauge the impact of gross human rights violations on the family system. Family members often gave testimony on behalf of their deceased loved ones without articulating their own suffering. This was especially true of the mothers whose children had been killed. Although the family was often a powerful support system in the event of trauma, the focus on the primary victim drew attention away from the trauma experienced by family

Reference 279 - 0.01% Coverage

20 Although the amnesty process was a fundamental part of the Commission's work, it was distinct from the Human Rights Violations and the Reparation and Rehabilitation committees, because it used very different processes and procedures. Amnesty applicants seldom encountered the Commission on an interpersonal level. Their association was through written applications and subsequent hearings. As the content of applications was wholly concerned with making full disclosure on the perpetration of gross human rights violations, applications were analysed by lawyers and judges on a strictly legal basis. Legal representatives usually accompanied amnesty applicants, and information about family situations and reactions, if known at all, was restricted to these parties.

21 Essentially, therefore, the Commission did not examine the effects on the perpetrator of committing a gross human rights violation. This was understandable, as this was not part of its mandate.

Reference 280 - 0.01% Coverage

23 Nevertheless, a commitment to reconciliation and healing means that the psychological plight of individuals who were involved in the perpetration of gross human rights violations and their families should be acknowledged. Like victims, perpetrators need to be given space to examine their emotional reactions and to reintegrate what has probably been disassociated from their emotional life. Simply

declaring that one has committed an act does not constitute coming to terms with oneself emotionally. Perpetrators share with their victims the potential for and experiences of post traumatic stress disorder. Significantly, there is a commonality of psychological fall-out involved in a traumatic episode that can form the basis of reconciliatory programmes.

Reference 281 - 0.01% Coverage

25 Post hearings workshops attempted to involve all significant stakeholders in communities, including those individuals who had made statements to the Commission but who did not testify at public hearings. On the surface, these workshops aimed at encouraging communities to assess the impact of gross human rights violations and of the hearing process, and to formulate initiatives to promote reconciliation. In many ways, however, the underlying goal of these workshops was to hand the truth and reconciliation process back to communities and to define clearly the limitations of the Commission itself. Post-hearing follow-up workshops went a long way towards consolidating the process, adding value to the development of reparations policy, and acknowledging the unique problems of different communities.

Reference 282 - 0.01% Coverage

1 The activities of the Commission resulted in the creation, use and distribution of volumes of documentation. These ranged from vital confidential documents such as amnesty applications and gross human rights violation statement forms, to Commission newsletters, posters and pamphlets. Such documentation also included research and special reports, transcripts of the Commission's hearings, confidential, secret and top secret records of the security forces, the National Intelligence Agency and the National Archives, computer generated database records and audio and video tapes. A documentation officer was made responsible for the management of records in each region.

Reference 283 - 0.01% Coverage

2 Initially, the methods employed to manage records varied regionally, as did the type of records collected, with the exception of the human rights violation statements. Furthermore, various committees, units and departments within the Commission operated fairly independently. The lack of uniformity or set policy on classification and storage systems and management and care of the Commission's records resulted in less than adequate record management. This needed to be remedied.

Reference 284 - 0.01% Coverage

b provide an understanding of the historical context within which alleged gross human rights violations referred to by the Commission occurred

Reference 285 - 0.01% Coverage

3 The work of the Department began with a series of workshops held during the first months of the Commission in the geographic areas covered by the Cape Town, Durban, East London and Johannesburg regional offices. These events brought together a range of community-based people, historians, journalists, human rights activists and others.

4 The purpose in each case was to identify gross violations of human rights that occurred in the area, moments of liberation and significant occasions of resistance – including events both well-known and documented, as well as lesser known events in danger of being lost to public memory.

Reference 286 - 0.01% Coverage

6 The chronologies (often disparate in form and substantially developed as a result of statement taking, human rights violations hearings and amnesty applications) provided a framework for the information gathering work of the Commission, the corroboration and investigative phase of its work and the findings process.

Reference 287 - 0.01% Coverage

10 The integrity of the Commission was dependent as much on its process or methodology as on its actual findings. Each of the statutory committees of the Commission (the Amnesty, Human Rights Violations and Reparation and Rehabilitation Committees) devised appropriate structures to promote their work. The Research Department sought to service the Commission at the levels of data gathering, the verification or corroboration of data and the findings process – which phases are outlined in the chapter on the methodology of the Commission. (See chapter on Methodology and Process)

Reference 288 - 0.01% Coverage

(SADF) and deployed as a covert paramilitary force in KwaZulu-Natal in 1986); commissions of enquiry in South Africa; the medical and social consequences of gross human rights violations; detention in the KwaZulu-Natal region; gender relations; historical overview: 1960-1994; history of conflict in KwaZulu-Natal; homelands policy and development; hostel violence; international human rights law; medical services: 1960-1994; conflict in the Natal Midlands; the Pan Africanist Congress (PAC) in historical context; political prisoners and detainees in South Africa; the 1960 Pondoland Rebellion (which took place in response to the imposition of the Bantu Authorities Act which prepared the way for the independent homelands); public order policing; the SADF in Namibia and Angola; the 1990 Seven Days War (which resulted from Inkatha Freedom Party (IFP)-ANC clashes in the Pietermaritzburg area); State Archives and records management; the Black Consciousness Movement; homelands security forces; legal and judicial system; Moutse/KwaNdebele homeland incorporation conflict; the South African broadcasting corporation and print media; the white right wing; torture in South Africa; torture in the Western Cape; warlords in KwaZulu-Natal; legal structures; the motives and perspectives of perpetrators.

Reference 289 - 0.01% Coverage

19 The researchers and others conducted a number of in-depth interviews. These included interviews with perpetrators representing the different political groupings involved in the conflict and with present and former politicians and security force operatives. Information on state security policy and operations obtained through these interviews provided important information for the research initiative. Special attention was given in these interviews to understanding the motives and perspectives of both perpetrators and victims of gross human rights violations.

20 Secondary material provided a further source of research information. Research staff consulted the writings, documentation and databases of specialist researchers, investigative journalists and others who had worked for a long time on issues falling under the mandate of the Commission. Databases on human rights violations recorded by other organisations were reviewed and tested against the criteria used in the corroboration and findings process. A small number of these was considered sufficient to provide a sound basis for making findings. Others were used only as a more general research tool and, in some instances, as a basis for corroborating the Commission's information.

Reference 290 - 0.01% Coverage

21 Researchers assisted in the scrutiny of statements by deponents. To this end, they consulted police records, the databases of human rights organisations, newspaper reports, the records of government departments and archival material as well as amnesty applications. Information received from submissions made to the Commission by political organisations and other bodies was also pertinent to this process, as was the archival material identified above. Where necessary and possible, individual witnesses were interviewed, and organisations of the state and civil society consulted.

Reference 291 - 0.01% Coverage

31 The Research Department was centrally involved in facilitating the drafting of the report. In order to arrive at an outline for the report, a series of regional and national planning workshops was held, involving researchers and others. The Commission adopted the outline, together with a proposal for the drafting process. Beginning in June 1997, regular Commission workshops were held to discuss the report, and the Commission spent the entire month of July 1998 working through the various chapters to be included in the report. In some instances a series of collaborative exercises was undertaken to produce drafts, notably in the case of chapters on regional profiles and those dealing with the various role players in the process that resulted in the gross violation of human rights. In other instances, individuals were given the responsibility of drafting chapters. In each case, however, the Commission as a whole was required to give its imprimatur to the various chapters.

Reference 292 - 0.01% Coverage

a Archbishop Desmond Tutu (Chairperson) b Dr Alex Boraine (Vice-Chairperson) c Revd Dr Khoza Mgojo (Commissioner) d Dr Wendy Orr (Commissioner) e Mr Dumisa Ntsebeza (Commissioner and Head of the Investigation Unit) f Ms Kate Pitt (Staff member) g Ms Virginia Gcabashe (Human Rights Committee member, Durban) h the Commission's first hearing in the Eastern Cape i the Commission's first Western Cape hearing j Archbishop Tutu at the Commission's Bloemfontein hearing.

Reference 293 - 0.01% Coverage

2 The office did extensive work on the widespread repression that had occurred in towns in the Boland, Southern Cape, Karoo and Northern Cape. However, many rural communities (particularly farm workers) expressed disappointment that the Commission's mandate did not extend, except in exceptional circumstances, to human rights violations relating to land and labour. This was of particular concern in Namaqualand and other areas of the Northern Cape.

Reference 294 - 0.01% Coverage

15 As in other regions, the Cape Town regional office included a Human Rights Violations Committee and a Reparation and Reconciliation Committee. Commissioners Adv Denzil Potgieter, Ms Mary Burton and committee member Ms Pumla Gobodo-Madikizela were assigned to the Human Rights Violations Committee, while commissioners Dr Mapule F Ramashala, Dr Wendy Orr and Ms Glenda Wildschut were assigned to the Reparation and Rehabilitation Committee.

Reference 295 - 0.01% Coverage

25 The Research Department supplied statement takers with a chronology of political events and a brief account of documented cases of gross human rights violations - giving them a useful point of entry. In addition, workshops were held for Commission staff statement takers and local non-governmental organisations (NGOs) and community-based organisations before statement takers worked in a sub-region. These workshops helped further familiarise statement takers with political events and with the people in the community who had been involved in these events, as well as engaging useful assistance from the organisations invited to the workshops.

Reference 296 - 0.01% Coverage

39 The regional investigation unit was assigned to conduct investigations on behalf of the Human Rights Violations and Amnesty Committees. Because the national Human Rights Violations Committee did not set guidelines on levels of corroboration, the process of investigation devolved on the investigation units themselves. This accounts for regional variations in the investigative process.

Reference 297 - 0.01% Coverage

41 The South African Police Service (SAPS), the South African National Defence Force (SANDF), the African National Congress (ANC) and other structures each established a central nodal point through which requests could be filtered. In the case of the SAPS, security police and police stations in the region were generally approached directly for records, and the nodal point used only where problems were experienced with document retrieval. This worked, except where documentation had been destroyed - either in terms of specific legislation, such as that governing the National Archives, or sometimes without authorisation. Specific mention must be made of the serious lack of co-operation from the SANDF which, to a significant degree, did not comply in supplying documentation concerning gross human rights violations.

Reference 298 - 0.01% Coverage

46 For hearings purposes, the region was divided into six geographical areas: the Northern Cape, the Peninsula, the Boland, the south-western Cape, the Karoo, and the West Coast/ Namaqualand. Staff and commissioners were divided into three teams, each consisting of a Human Rights Violations and a Reparation and Rehabilitation commissioner or committee member, two statement takers, a briefer, a driver, a researcher and a logistics officer, later joined by an investigator. Each team was co-ordinated by the logistics officer who was responsible for administration and logistical support, and a commissioner who was largely responsible for information flow ('Infocom') and helping to set themes for the hearing. Administrative staff members were not officially part of the team, but were integrated at different levels to ensure the smooth running of the hearing.

Reference 299 - 0.01% Coverage

48 During the hearings stage, the team planned, set up and held hearings in selected towns. The availability of suitable venues and the need to accommodate the needs of the media determined where hearings were held. Occasionally, however, the chosen location proved inaccessible. This limited the participation of communities. For example, it was decided on the basis of the aforementioned criteria to hold the southern Cape hearing in George, without taking into account the fact that human rights violations took place predominantly in Oudtshoorn. This limited the involvement of members of the

Oudtshoorn community and informed a later decision to hold a reparation and rehabilitation programme in Oudtshoorn in February 1997.

Reference 300 - 0.01% Coverage

53 Two hundred and eighty-nine cases were investigated for presentation at twelve public hearings. In general, cases at these public hearings were chosen to highlight human rights violations that had been committed in each sub-region. There was criticism that the Cape Town office showed a bias towards investigations and hearings on violations committed by the security forces rather than those committed by the liberation movement. However, 90 per cent of statements demonstrated the involvement of the security forces in human rights violations.

54 Hearings were scheduled to fit into the national schedule that allocated one week per month to each region to avoid competition for the media, commissioners' time and other resources. Some hearings (in the south-west Cape, West Coast and central Karoo) were cancelled because there were not sufficient statements to justify a hearing. Research had already indicated that these geographical areas would not yield a significant number of statements on gross human rights violations. In addition, the statements collected reflected a number of violations falling outside the Commission's mandate.

55 Area hearings dealt with a variety of human rights violations cases. Some of the hearings focused on specific events or themes.

Reference 301 - 0.01% Coverage

heard were drawn from events spanning the three decades under scrutiny by the Commission and were examples of the widespread resistance which took place. Some of the better known events referred to in the hearing included the ambush and killing of the 'Guguletu Seven', the shoot-out and killing of Anton Fransch in Athlone and the shooting of Yvette Otto in Valhalla Park. The hearing also drew attention to the death of Looksmart Ngudle, the first detainee to die in detention, and also to human rights violations committed by the liberation movement, such as the St James Church massacre.¹

Reference 302 - 0.01% Coverage

c South East Cape (George) (17 - 19 June 1996). This hearing focused on the human rights violations committed by kitskonstabels and the torture of young teenage activists who had their testicles, penises or breasts slammed in drawers. The hearing also heard about human rights violations committed by perpetrators from political organisations fighting apartheid, such as the killing of a community councillor and the attack on a Plettenberg Bay teacher.

Reference 303 - 0.01% Coverage

i Boland (Paarl & West Coast) (14 - 16 October 1996). This hearing was accompanied by an exhibition at the museum that provided insight into gross human rights violations. A particularly moving exhibit concerned a conscript who died in combat. A statement of apology from the Nederduitse Gereformeerde Kerk was read. The hearing also focused on the clashes between the United Democratic Front (UDF) and Azanian People's Organisation (AZAPO), the 1960 killing of a suspected informer, and the killing of Vivian Mathee and others in the 1985 cross-border raid. This hearing was unique in that the prehearing preparation was specifically geared towards the process of building reconciliation in the community.

Reference 304 - 0.01% Coverage

confirmed long held beliefs about the role of the state in fomenting violence (as in KTC), the involvement of the police in provoking unrest in order to kill (as in the 'Trojan horse' incident) and the involvement of security forces based at Vlakplaas in the Western Cape (as in the 'Guguletu Seven' incident). All these hearings provided a window into understanding human rights violations during the period of intense resistance and repression that characterised the 1980s. These violations included:

Reference 305 - 0.01% Coverage

b those interested in promoting human rights: including advice offices, the Human Rights Commission, religious organisations and institutions and the Land Commission;

Reference 306 - 0.01% Coverage

73 Finally, research seminars took place on a monthly basis. These were the responsibility of the Research Department. The seminars took the form of panel discussions on issues of public interest, focusing largely on reconciliation and amnesty. Invitations were circulated widely amongst academic institutions and human rights organisations in the Peninsula and Boland areas.

Reference 307 - 0.01% Coverage

12 The Commission appointed four committee members to support its work in the region: Mr Mdu Dlamini, Ms Virginia Gcabashe and Mr Ilan Lax¹ for the Human Rights Violations Committee and Dr S'Mangele Magwaza for the Reparation and Rehabilitation Committee. In addition, Judge Hassen Mall and Judge Andrew Wilson of the Amnesty Committee were both based in the Durban office, although they travelled widely throughout the country for amnesty hearings. Ilan Lax also served on the national legal working group and acted as the regional legal aid committee representative.

Reference 308 - 0.01% Coverage

16 A regional manager and an information manager were appointed in March 1996. The region appointed a head of the Investigation Unit who was functionally responsible to the national office, but administratively responsible to the region. A support services manager was appointed in April 1996 and was responsible for the administrative functioning of the office. A regional bookkeeper was appointed together with three logistics officers. Other staff included an information manager and an assistant to the Human Rights Violations Committee. The Reparation and Rehabilitation Committee was supported by a regional co-ordinator and briefers, and the Amnesty Committee was supported by two secretaries. Three logistics officers were responsible for organising hearings and venues for statement taking, workshops, briefings and amnesty and section 29 hearings.

Reference 309 - 0.01% Coverage

20 The core of planning took place at weekly management meetings. Other meetings supplemented these. The Reparation and Rehabilitation and the Human Rights Violations committees held regular meetings and, about every six months, there were regional strategic planning meetings to prepare for briefings and hearings, and devise an overall vision for the region.

Reference 310 - 0.01% Coverage

The first human rights violations hearing in this region took place at the Jewish Club in Durban. The hearing was organised so as to give as wide a view as possible of human rights violations which occurred in the two provinces, and forty-three cases were heard from all over the region. Testimony was heard about the killing of the parents of a one year old child in a cross border raid into Lesotho and a bomb in central Durban which killed the parents of a young boy. The Commission also heard the testimony of the mother of Stompie Seipei, who was killed in Soweto, as well as a submission on difficulties with the justice system.

Reference 311 - 0.01% Coverage

The second hearing took place in Bloemfontein, where forty cases were heard from all over the Free State with the aim of painting a broad picture of human rights violations in that province.

Reference 312 - 0.01% Coverage

I Vryheid (16-17 April 1997). The Vryheid hearing attempted to reflect a cross section of human rights violations. Evidence pointed to collaboration between the KZP and the IFP in collective action against the ANC and the UDF in over 85 per cent of the cases.

Reference 313 - 0.01% Coverage

37 In addition to these hearings on human rights violations, section 29 hearings (in camera investigative enquiries) were held at the regional office. Several amnesty hearings were also held in various centres in the two provinces.

Reference 314 - 0.01% Coverage

1 The East London regional office of the Truth and Reconciliation Commission (Commission) faced its first real challenge with the announcement that the launch of the Human Rights Violations Committee hearings would be held in the Eastern Cape. This was met with threats of legal action and interdicts aimed at preventing the event from taking place.

2 There was some popular discontent as well. People had difficulty in understanding some of the changes that were taking place, particularly with regard to the integration of the security forces of the former Ciskei and Transkei with the South African Defence Force (SADF), Umkhonto weSizwe (MK) and the Azanian National Liberation Army (AZANLA). In addition, the redeployment of numbers of former security police meant that many perpetrators of human rights abuses were now in the service of the new African National Congress (ANC)-led government. Considerable bitterness was expressed by those who had suffered abuse at the hands of the former state and who felt that the 'negotiated settlement' (of which the Commission was a product) had benefited people other than themselves. Not only did they feel that they had not seen justice done concerning perpetrators of human rights abuses but, in some cases, those same perpetrators were still in positions of power. This scenario was not particularly conducive to the desired culture of respect for human rights and a positive attitude towards the work of the Commission.

3 Some families of victims of human rights violations, such as the family of Steve Biko and Griffiths and Victoria Mxenge, were deeply suspicious of the Commission's ability to address their deeply felt grievances towards those responsible for the deaths of their loved ones. At the time of the launch of the Commission, the Azanian Peoples' Organisation (AZAPO) and members of some of the victims'

Reference 315 - 0.01% Coverage

families repeatedly and publicly voiced their objections. The same organisation, together with the Biko and Ribeiro families, took the matter to the Cape Provincial Supreme Court Division for an order to restrain the Commission from conducting hearings until the Constitutional Court had ruled on the validity of their constitutional challenge. Former members of the security forces also launched a legal action. Human Rights Violations Committee was legally justified, in the course of its public hearings, in receiving evidence from witnesses adversely implicating any person as a perpetrator without prior notice being given to them.

Reference 316 - 0.01% Coverage

10 The regional office was allocated a single commissioner, the Revd Bongani Finca, formerly of the Border Council of Churches. Four committee members were assigned to it: Mr Ntsikilelo Sandi, Ms Judith 'Tiny' Maya and Ms June Crichton for the Human Rights Violations Committee and Archdeacon Mcebisi Xundu for the Reparation and Rehabilitation Committee. Ms Motho Mosuhli was later appointed to replace Ms Maya, who resigned from the Commission.

Reference 317 - 0.01% Coverage

19 It took a considerable time before systems adopted by the Commission nationally were properly implemented in the East London office. This was owing in part to a lack of understanding of the systems by staff, and partly to the shortage of departmental heads. This particularly affected work on human rights violation cases.

Reference 318 - 0.01% Coverage

22 Statement taking began early. Both statement takers and briefers helped to get the first human rights violation hearing off the ground in April 1996 by taking a significant number of statements. During the first hearing, the statement takers and briefers also helped transport witnesses to the hearing and protected them from crowds of journalists and other interested people.

Reference 319 - 0.01% Coverage

24 Poor access to vehicles impacted on statement taking programmes and vehicles were rotated in an attempt to accommodate the needs of statement takers, whose responsibilities also included fetching witnesses for the hearings on human rights violations and identifying which communities had not yet been contacted for statement taking. The shortage of vehicles meant that statements were taken largely in cities and towns and at the human rights violation hearing venues. Rural villages were, of necessity, often ignored.

Reference 320 - 0.01% Coverage

26 The job of the data analyst was to do a basic analysis of the hand-written human rights violation statements and capture details on the Commission's database.

Reference 321 - 0.01% Coverage

29 The office held fifteen human rights violation hearings (ten during 1996 and five in 1997) in twelve different towns throughout the province. Nearly 700 witnesses were heard, including some alleged perpetrators and a small number of witnesses who made submissions on behalf of organisations or provided background information. Thus, about one-third of the people who made human rights violation statements by June 1997 were given the opportunity to testify at the public hearings.

Reference 322 - 0.01% Coverage

30 The success of the first hearing in East London gave the office a great boost of confidence, despite a bomb scare during the morning session. Thousands flocked to the hearing and, by the end of the first day, support for the Commission and its work was confirmed. Twenty witnesses testified about their direct and/or indirect experiences of gross human rights violations - including killings, disappearances, torture and various forms of severe ill treatment at the hands of either the state security forces or liberation movements. This set the standard for the rest of the hearings organised by the East London office.

Reference 323 - 0.01% Coverage

32 Hearings were often logistic nightmares, and the fact that they were all fairly successful is a tribute to the hard work and dedication of the staff involved in them. The frequent changes to the schedule for human rights violation hearings - necessitated by efforts to cover as much of the province as possible - meant that planning was disrupted, often resulting in last minute rushes.

33 Staff went to a lot of trouble to identify different types of cases for the human rights violation hearings so that both high and low profile cases were heard, witnesses from across the political spectrum were given a voice, and both individual and group cases were heard. Occasionally alleged perpetrators were able to give their side of the story at the same hearings as their accusers. The hearing at Lusikisiki, for example, became a landmark in uncovering the history of rural rebellions from the early 1960s.

Reference 324 - 0.01% Coverage

35 Inevitably, the hearings took priority, but there was a need to focus on other cases too. As noted earlier, while about one-third of the cases collected by the East London office by June 1997 were dealt with in public hearings, other cases required the same level of attention. Each case needed to be investigated and an eventual finding made by the Human Rights Violations Committee.

Reference 325 - 0.01% Coverage

36 Following is a list of the human rights violations hearings organised in the Eastern Cape and a short description of important trends or cases dealt with:

a East London (15 - 18 April 1996). This was the national launch of Human Rights Violations Committee hearings, the first of its kind. It received overwhelming media coverage and community support. For the first time, the South African community across the racial divide was exposed to the gruesome human rights violations that happened in the past. This was the hearing that was disturbed by a bomb threat.

b Port Elizabeth (21 - 23 May 1996). The second hearing was equally enthusiastically received by the community, with non-governmental organisations (NGOs) giving counselling and support. The Commission's legality was also tested by a court application, lodged by the attorney of an alleged perpetrator of human rights violations, which consequently prevented the Mthimkulu case from being heard.

Reference 326 - 0.01% Coverage

i Aliwal North (21 - 23 October 1996). The regional office tried to reach out to small, rural towns, where kitskonstabels operated. Sixty-one deponents from Aliwal North, Barkly East, Burgersdorp and Sterkspruit gave testimony. The Human Rights Violations Committee observed that human rights violations in small towns did not receive much publicity, and people consequently suffered in silence, without adequate legal representation, at the hands of the state apparatus.

Reference 327 - 0.01% Coverage

o Mdantsane (9 - 13 June 1997). This hearing focused on killings that occurred during the 1983 bus boycott. Wreaths were laid at Egerton and Highgate, where Ciskei and Azanian Peoples Liberation Army (APLA) armed forces had attacked people. Human rights violations relating to women were also given a full day at this hearing.

Reference 328 - 0.01% Coverage

46 In 1997, the designated statement taker programme was set up and became a crucial addition to internal statement taking programmes, freeing staff to work in other areas. Three NGOs were contracted to assist with the programme: Lawyers for Human Rights, through its links with advice offices and the

Reference 329 - 0.01% Coverage

2 A total of 6 200 statements was made to the office; twenty-five Human Rights Violations hearings were organised at which witnesses gave oral testimony of gross human rights violations, and six post-hearing follow-up meetings were held in the different areas.

3 The biggest challenge facing the Johannesburg office was how, with limited human and logistic capacity, to deal with the large population and the wide scope of human rights violations that occurred in this region. The office was allocated a similar staff component to the other regional offices, even though the area it served houses over half the nation's population. However, through a combination of creative strategies and hard work by the Commission's staff, the Johannesburg office managed to cover a good many areas that would otherwise have remained untouched. Yet, because of the shortage of resources, the office was not able to cover the full area comprehensively.

Reference 330 - 0.01% Coverage

7 As the convening commissioner, Dr Fazel Randera assumed overall responsibility for the work of the office. He was also a member of the Human Rights Violations Committee. Joint deputy chairpersons of that committee, lawyers Ms Yasmin Sooka and Mr Wynand Malan¹ were based in this office. These commissioners were assisted by Human Rights Violations Committee members Dr Russell Ally, Mr Hugh Lewin and Ms Joyce Seroke.

Reference 331 - 0.01% Coverage

10 A national staffing plan was drawn up for the entire Commission before any staff was actually employed. The plan distributed staff equally between the four regional offices, with an additional component for the national office in Cape Town. No cognisance was taken of the territory, population or

extent of human rights violations each office was required to service. This meant that the Johannesburg office was, proportionally speaking, understaffed from the outset.

Reference 332 - 0.01% Coverage

24 Statement taking fell under the banner of the Human Rights Violations Committee and was the primary information-gathering activity of the Commission. It was often the only channel open to victims to tell their story to the nation. The pressure this implied, coupled with having to listen to traumatic stories of victims under conditions that were often difficult, made the job of statement taking one of the most stressful in the Commission.

25 The designated statement taker programme was launched in 1997 in order to provide communities with greater access to the Commission. The aim was to involve NGOs, faith communities and community based organisations in taking statements and was particularly important in the light of the extremely low staff to population ratio in the office. Co-ordinated by the community liaison officer, almost 100 designated statement takers from twenty-three NGOs, faith communities and community based organisations in twenty towns and cities were involved in taking statements on gross human rights violations. Through this programme, almost 2 000 statements were collected.

Reference 333 - 0.01% Coverage

31 A Dutch investigator managed the process of conducting these administrative investigations. The low level corroboration team comprised one section of the Investigation Unit, the largest department in the regional office. It took responsibility for presenting a complete product to the Human Rights Violations Committee for a finding. The team initially included two local investigators who worked on amnesty applications and substantive human rights violations cases. Later, however, the team took on board up to twenty corroboration assistants.

Reference 334 - 0.01% Coverage

34 More by default than design, the holding of public human rights violations hearings became the dominant activity of the Commission. Very little thought had been given to the process of organising these hearings before the Commission began its work, and it was left to commissioners and management to work out a format. An eight-week cycle was devised which started with public education meetings, moved into statement taking and logistic arrangements, and closed with a media campaign, a selection of cases for public attention and the hearing itself.

Reference 335 - 0.01% Coverage

37 Another reason for this change of strategy was a concern that the Human Rights Violation Committee had become too hearings-driven and needed to be more statement-driven. However, with systems in motion and work already underway, the office never really succeeded in making the transition to statement taking as its prime activity.

Reference 336 - 0.01% Coverage

g Nelspruit (2-5 September 1996). The Mpumalanga provincial government provided substantial logistic support for this event by providing an office for the committee, which continued to function for as long as the Commission was active in the province. Besides human rights violations including killing, torture and

harassment by the security forces, the Commission heard testimony about the activities of the vigilante Kabasa gang, which wreaked havoc in the townships around Nelspruit in the 1980s. In Klerksdorp (23-26 September 1996). In this North West Province town, the Human Rights Violations Committee was told of violations carried out by white right wing extremists, often in relation to land issues. A bus and consumer boycott in several small towns in the area resulted in repression and harassment by the security forces.

Reference 337 - 0.01% Coverage

At Women's hearings (28-29 July 1997). Women suffer different forms of human rights violations, and these were the focus of this two-day hearing. Deponents told of rape and other forms of sexual harassment. They also related the difficulties of being the family breadwinner when state repression had resulted in the deaths of husbands and sons.

Reference 338 - 0.01% Coverage

The hearing focused on allegations of gross human rights violations by members of the Mandela United Football Club, including the death of Stompie Seipei.

Reference 339 - 0.01% Coverage

This chronology seeks to record all major apartheid legislation as a context within which gross human rights violations occurred, but is not exhaustive of all legislation passed in the period under consideration by the Truth and Reconciliation Commission (the Commission). Legislation of 'independent' and 'self-governing' homelands is given separately. The homelands chronology is not, however, as comprehensive as that on the legislation enacted by the South African Parliament. Much of the homelands legislation was similar to South African parliamentary legislation. In several instances it proved extremely difficult to trace and record all details of homelands legislation.

Reference 340 - 0.01% Coverage

The history of security legislation in South Africa is very convoluted. Only those laws mentioned in the Race Relations Surveys (RRS and SRR) and John Dugard's Human Rights and the South African Legal Order (1978) are listed. In particular, those laws relating to the tightening up of detention legislation are included. Only a brief description of the various state of emergency regulations is given.

Reference 341 - 0.01% Coverage

Provided for investigation towards the establishment of as complete a picture as possible of the nature, causes and extent of gross violations of human rights committed during the period from 1 March 1960 to the cut-off date contemplated in the Constitution. Commenced: 1 December 1995

Reference 342 - 0.01% Coverage

The Ciskei National Assembly amends its Constitution so that no law in effect in the territory can be declared invalid by any court of law on the grounds that it contravenes fundamental human rights.

Reference 343 - 0.01% Coverage

'Human rights in the homelands: South Africa's delegation of repression' in Fund for Free Expression Report, June 1984 Bendix, Sonia. Industrial Relations in South Africa, Cape Town, Juta, 1989

Reference 344 - 0.01% Coverage

Dugard, John. Human Rights and the South African Legal Order, Princeton, Princeton University Press, 1978 Horrell, Muriel. Laws affecting Race Relations in South Africa 1948-1976, South African Institute of Race Relations, Johannesburg, 1978 O'Regan, Catherine. 'The Prevention of Illegal Squatting Act,' pp163-79 in Murray, C and

Reference 345 - 0.01% Coverage

1 This chapter seeks to provide an overview of the context in which conflict developed and gross violations of human rights occurred. Other chapters in this volume focus specifically on the nature and extent of violations committed by the major role-players throughout the mandate period. The volume focuses specifically on the perpetrators of gross violations of human rights and attempts to understand patterns of abuse, forms of gross violations of human rights, and authorisation of and accountability for them.

Reference 346 - 0.01% Coverage

In identifying the principal organisations and individuals responsible for gross violations of human rights in its mandate period, the Truth and Reconciliation Commission (the Commission) had a vast range of information at its disposal. In addition to court records and press reports, it received over 21 000 statements from individuals alleging that they were victims of human rights abuses and 7 124 from people requesting amnesty for acts they committed, authorised or failed to prevent. In addition, the Commission received submissions from the former State President, Mr P W Botha, political parties, a variety of civil institutions and organisations, the armed forces and other interested parties. All these submissions were seriously considered by the Commission. Through its power to subpoena witnesses, the Commission was also able to gather a considerable amount of information in section 29 and other public hearings.

Reference 347 - 0.01% Coverage

4 Despite these difficulties, a vast corpus of documentation was collected – more material than has been available to any previous enquiry into human rights in South Africa. However, the sources of information, while rich, were not evenly distributed, presenting difficulties in the identification of organisations and individuals who became perpetrators of torture, killing and other gross violations. The amnesty applications received from former members of the South African Police (SAP) represent an invaluable new source of material. The Commission received many applications from serving or retired police officers specifying their role in gross violations of human rights. Some of these cases, such as the death in detention of Mr Steve Biko, were well known both at home and abroad; others were unknown outside a very small circle of the perpetrators themselves. The information contained in amnesty applications revealed a deeper level of truth about the fate of a number of individual victims.

Reference 348 - 0.01% Coverage

individual members of the ANC in the commission of gross violations of human rights. The writing of this volume was also severely constrained by the fact that the majority of security force amnesty applications had not been heard at the time of reporting. This affected the ability of the Commission to include in this report assessments of the planning and authorisation of gross violations. Observations in these respects are therefore tentative and will be dealt with more fully in the final report of the work of the Amnesty Committee.

8 The Commission attempted to resolve these difficulties by identifying patterns and trends in the gross violations reported, as well as patterns of behaviour in groups and parties responsible for their perpetration. In so doing, it aimed to achieve a broader and more accurate picture of the history of human rights violations during the mandate period, 1960–94.

Reference 349 - 0.01% Coverage

10 While few statements were been received from deponents and victims outside South Africa, it has been argued that the majority of victims of gross violations of human rights were in fact residing outside the country's borders at the time the violations were committed. One of the biggest single incidents of gross violation which occurred during the mandate period was the assault by the SADF on a base of the South West African People's Organisation (SWAPO) located at Kassinga, Angola in 1978. More than 600 people were killed at Kassinga in one day. According to SWAPO, these were unarmed refugees. According to the South African government, Kassinga was a guerrilla base and thus a legitimate military target. This is discussed in this volume.

Reference 350 - 0.01% Coverage

12 It is for this reason that a distinction has been made in this volume between security activities and gross violations of human rights outside and inside South Africa's borders. This does not imply that the two spheres were separate. It is, however, clear that some of the most powerful protagonists in the conflict in South Africa recognised at an early stage that the contest was occurring to a large extent outside South Africa. In its first submission to the Commission, the SADF stated emphatically that "national security policy made explicit provision for pro-active actions beyond the borders of the RSA"¹. This was consistent with a view frequently expressed at State Security Council (SSC) meetings that the defence of South Africa should take place outside its borders. The South African government's principal armed opponent, Umkhonto weSizwe (MK) also recognised, after the arrest of many of its personnel and the destruction of its internal organisation in the early 1960s, that its war had of necessity to be waged from outside South Africa.

13 Evidence before the Commission shows that members of the ANC and Pan Africanist Congress (PAC) in exile were also involved in the commission of gross violations of human rights, particularly within their own ranks.

Reference 351 - 0.01% Coverage

14 The difficulty of attributing precise responsibility for human rights violations committed outside South Africa applies also to the internal situation. As the political conflict in the country gained intensity, many more people were drawn into activism. In the 1990s particularly, more gross violations were carried out by members of South African society acting in what they considered to be the pursuit of a political aim than by members of political organisations acting on the express orders of their superiors. Both the state security services and guerrilla organisations such as MK aimed to supply such social actors with the means to achieve their aims – including weapons, information, trained personnel, and, in the case of the state,

funding. It was therefore difficult to attribute direct responsibility for many violations, such as the lynchings or necklacings carried

Reference 352 - 0.01% Coverage

16 By the 1990s, the great majority of human rights violations, especially killings, were being carried out by persons who were not bound to a political authority. In some cases, weapons were supplied by organised groups. The Commission sought to establish a proper balance between individual cases where an identified perpetrator could be shown to have violated the rights of a specific victim, and the many more cases where large numbers of people, hundreds or even thousands, were killed in the course of 'collective' violence. Examples of the latter included drive-by shootings, indiscriminate massacres on trains or in certain residential areas, and armed political conflicts in KwaZulu-Natal and the East Rand where the responsibility of individual actors cannot be identified with precision.

17 Volume Three of this report deals with human rights violations in the different provinces and regions of the country. In many ways, the division between that volume and this is an arbitrary one and has resulted in an inevitable overlap in certain instances. In others, detail is included in one volume and simply sketched or referred to in the other. Ideally, the two volumes should be read together and seen as complementary.

Reference 353 - 0.01% Coverage

28 The history of resistance in South Africa was frequently associated with shifts in the patterns and forms of gross violations of human rights, as well as in the changing identities of perpetrator groups. In response to the events of 1960 and the liberation movements' adoption of the armed struggle, the former state invoked the full force of its security legislation to curb resistance. Detention of political activists became the primary means of intensifying repression. Torture of detainees and other abuses associated with detention were the main forms of violation reported to the Commission for this early period. The most frequently reported perpetrator grouping was the security police.

29 The growing influence of counter-insurgency thinking – associated with South Africa's involvement in the wars in the former South West Africa and Rhodesia – had a substantial impact on the patterns and modes of abuse reported. In the first place, it introduced a regional dimension to gross violations of human rights. Victims were increasingly non-South Africans. Secondly, as the political temperature rose within South Africa, models of crowd control employed by both the SAP and the SADF were informed by a counter-insurgency perspective. Thus counter-insurgency thinking was turned not only on a foreign but on a domestic civilian population. Increasingly, gross violations were attributed to those responsible for public order policing, among them the riot police and later the

Reference 354 - 0.01% Coverage

30 The insurrectionary model of resistance adopted by the ANC in the 1980s was based on the notion of a 'people's war'. Associated with this shift in strategic thinking was the fact that, increasingly, gross violations of human rights were perpetrated not by members under the direct command of the ANC or MK, but by civilians who saw themselves as ANC supporters and acted in line with what they perceived to be the ANC's strategic direction. Thus violations associated with the liberation and mass democratic movements in the 1980s were not, in the main, the result of armed actions and sabotage, but tended to target those perceived to be collaborating with the policies and practices of the former government.

Reference 355 - 0.01% Coverage

35 During the 1960s and most of the 1970s, armed actions by MK resulted in few human rights violations. Targets were symbolic or economic and care was taken not to endanger civilians. The first sabotage actions of MK resulted in some damage to property, notably to electricity pylons and similar infrastructure, but the intention of such actions was, according to the MK Manifesto, to “bring the government and its supporters to their senses before it is too late” rather than to initiate a revolution.

Reference 356 - 0.01% Coverage

139 The kinds of operations undertaken by the security forces in the light of the 1979 guidelines and the 1983 priorities, and gross human rights violations which resulted from such operations are examined in this volume.

Reference 357 - 0.01% Coverage

167 This then provides an overview of the development of conflict in South Africa during the mandate period, the context in which gross violations of human rights occurred. The following chapters focus specifically on the nature and extent of violations committed by the major role-players throughout the mandate period.

Reference 358 - 0.01% Coverage

168 Reference has been made in several others places in the Report (notably in the Legal Challenges chapter in Volume 1 and in the Findings and Conclusions chapter in Volume 5) to the difficulties involved in making findings and naming perpetrators of gross violations of human rights. The definitive judgement of Mr Justice Corbett, which required the Commission to give anyone against whom a detrimental finding was being contemplated a reasonable opportunity to respond, made a huge impact on the work of the Commission. Those who may have expected this report to contain a long list of perpetrators of gross violations of human rights will, consequently, be only partially satisfied with what they find in this and other volumes.

Reference 359 - 0.01% Coverage

1 The Promotion of National Unity and Reconciliation Act (the Act) charges the Commission with investigating and documenting gross human rights abuses committed “within or outside” South Africa in the period 1960–94. This chapter focuses on the “outside”, specifically the Southern African region and Western Europe. Evidence has been gathered of violations committed by South African security forces or their agents and/or surrogates in nine regional states – Botswana, Lesotho, Swaziland, Angola, Mozambique, Zimbabwe, Zambia, Tanzania, and the Seychelles – and in Western Europe – in the United Kingdom, France, Belgium, the Netherlands and Scandinavia.

Reference 360 - 0.01% Coverage

3 Another area of focus will be acts which, though they may not in and of themselves have constituted gross violations, were violations of state sovereignty and international law and invariably led to or created the conditions for the perpetration of gross violations of human rights. The reference here is to the wars in Angola and South West Africa (now Namibia), South African Police (SAP) operations in Rhodesia,

surrogate-force campaigns in Angola, Mozambique, Lesotho, Zimbabwe and Zambia, and the attempted coup in the Seychelles.

Reference 361 - 0.01% Coverage

9 The perpetration of gross human rights violations outside South Africa will be discussed through an examination of the following types of security operations:

Reference 362 - 0.01% Coverage

20 In human rights terms, the SADF raid on Kassinga, which killed over 600 people, is possibly the single most controversial external operation of the Commission's mandate period.

Reference 363 - 0.01% Coverage

THE COMMISSION FINDS THAT OPERATION REINDEER WAS A VIOLATION OF THE TERRITORIAL SOVEREIGNTY OF THE REPUBLIC OF ANGOLA AND THAT IT RESULTED IN THE COMMISSION OF GROSS HUMAN RIGHTS VIOLATIONS AGAINST THE CIVILIAN OCCUPANTS OF THE KASSINGA CAMP WHICH ENTAILED DELIBERATE PLANNING ON THE PART OF THE FOLLOWING PERSONS WHO ARE HELD ACCOUNTABLE:

Reference 364 - 0.01% Coverage

65 In terms of civilian casualties, the mass displacement of civilians and the creation of an internal refugee population, as well as the wholesale destruction of towns and socio-economic infrastructure, Operation Protea probably caused more human suffering and physical damage than any other operation in the thirteen-year-long Angola war, resulting in violations of human rights on a vast scale.

Reference 365 - 0.01% Coverage

72 The environmental effects of the war on the south (and in the Caprivi) were devastating. Both forest lands and wildlife were destroyed. This rape of the environment was sanctioned by the SADF. In the early 1980s, covert front companies were established to facilitate trading in rare woods like teak and kiaat, and in ivory, skins and diamonds. A safari company was also set up through which the hunting of big game was regulated. Ostensibly, these activities were undertaken to raise secret funds for UNITA, but they led quickly to widespread and high-level corruption. THE COMMISSION FINDS THAT THE SOUTH AFRICAN GOVERNMENT'S MILITARY CAMPAIGN IN ANGOLA BETWEEN 1977 AND 1988 LED TO GROSS VIOLATIONS OF HUMAN RIGHTS ON A VAST SCALE. THE COMMISSION FINDS FURTHER THAT THE CAMPAIGN CONSTITUTED A SYSTEMATIC

Reference 366 - 0.01% Coverage

PATTERN OF ABUSE, WHICH ENTAILED DELIBERATE PLANNING ON THE PART OF THE FORMER CABINET, THE STATE SECURITY COUNCIL AND THE LEADERSHIP OF THE SOUTH AFRICAN DEFENCE FORCE. THE COMMISSION FINDS THESE INSTITUTIONS AND THEIR MEMBERS ACCOUNTABLE FOR THE AFORESAID GROSS VIOLATIONS OF HUMAN RIGHTS.

Reference 367 - 0.01% Coverage

73 Three factors are central to the human rights situation in South West Africa (Namibia) in the Commission's mandate period. The first is the fact that the South African presence in the territory was a violation of international law, and that the South African administration and its courts and security forces had no right in international law to carry out any actions affecting the South West African people. If this did not apply for the full Commission mandate period, it certainly applied from October 1966 when the UN General Assembly terminated South Africa's mandate over South West Africa, a decision affirmed by the Security Council in 1969. In June 1971, the International Court of Justice in The Hague declared South Africa's presence in South West Africa illegal and demanded its withdrawal. It further declared invalid all South Africa's acts on behalf of or concerning South West Africa. The Commission's analysis of the situation in South West Africa is informed by this position in international law, from which it follows that all security-related actions initiated by the South African and South West African administrations and their security forces were those of illegal and illegitimate authorities.

Reference 368 - 0.01% Coverage

76 In the account that follows, emphasis will be laid on two particular factors – torture and extra-judicial killings. In regard to the latter, the focus will be on the bounty or 'cash-for-corpses' policy employed by the police counter-insurgency unit, Koevoet (crowbar). Where possible, reference will be made to those human rights violations and amnesty applications pertaining to South West Africa that were submitted to the Commission. These were, however, relatively few: only one human rights violations submission and thirteen amnesty applications were received.

Changes in human rights violations over time

77 The pattern of human rights violations in South West Africa varied over time, in accordance with the level and nature of resistance to the South African occupation. This pattern may be periodised as follows:

Reference 369 - 0.01% Coverage

78 During this period, there was little organised resistance to South Africa's occupation and no armed struggle. Even so, the apartheid system was enforced with even more rigidity in South West Africa than in South Africa itself and the human rights of the people of South West Africa were constantly and systematically violated, in particular through the system of contract migrant labour. During the 1960s and 1970s, up to two-thirds of South West African workers were subjected to this form of labour control and coercion. Contract workers were required to leave their families in the 'homelands' and to sign contracts that rendered them powerless to choose their employer or to negotiate a wage. Those who resigned from their jobs or broke their contracts were liable to deportation back to the 'homeland'. This was a systematic violation of basic human rights which established a system of quasi-slavery. It also served to depress wages and prevent labour organisation. While modifications were made to the system after the 1971–72 contract workers' strike, the system remained in place until 1977.

Reference 370 - 0.01% Coverage

border. In the same year, the SADF took over counter-insurgency responsibility from the SAP and established an infrastructure of bases throughout the 'operational areas' of Owamboland, Kavango and Caprivi. Human rights abuses by South African troops during this period escalated considerably. One consequence was a dramatic increase in the outflow of refugees, particularly from Owamboland.

Reference 371 - 0.01% Coverage

82 The fifth period falls between 1980 and 1988. From around 1980, the nature of the war began to change. South Africa increasingly relied on Koevoet, a newlyformed special police counter-insurgency unit, which became notorious for its human rights abuses during its pursuit operations. A process of indigenising the war effort began and South West Africans were recruited and conscripted into a South West Africa Territory Force (SWATF), a largely locally-staffed military force which took on much of the burden of the war, although it remained under firm South African control at the senior officer level. A South West African Police force (SWAPOL) was established in a similar manner.

Reference 372 - 0.01% Coverage

Categories of abuses 84 Human rights abuses in South West Africa fell into the following categories. Political repression and imprisonment

Reference 373 - 0.01% Coverage

92 Mass detentions in the 'operational areas' were common. Many detainees were held secretly and without access to lawyers or relatives for long periods, sometimes years. Such conditions provided opportunities for prolonged abuse and torture. Torture was also used as a method of intimidation by police and soldiers in the war zone, and as a way of extracting 'operational' information quickly. Torture methods reported in the South West African press, in affidavits by South West Africans and as a result of international human rights investigations included beatings, sleep deprivation, drowning, strangling and suffocation, suspension from ropes or poles, burnings (sometimes over open fires), electric shocks and being held against the hot exhausts of military vehicles.

Reference 374 - 0.01% Coverage

THE ABDUCTION OF ANGOLAN CITIZENS AND SOUTH WEST AFRICAN REFUGEES FROM ANGOLAN SOIL, THEIR TORTURE AT THE OSHAKATI MILITARY BASE AND THEIR FORCIBLE DETENTION AT MARIENTAL WHERE THEY WERE DENIED BASIC RIGHTS AND FORCED TO UNDERTAKE HARD LABOUR AMOUNT, IN THE COMMISSION'S VIEW, TO ILL TREATMENT AND DEPORTATION TO SLAVE LABOUR AND, AS SUCH, TO GROSS VIOLATIONS OF HUMAN RIGHTS. FOR THIS, THE COMMISSION FINDS PRIME MINISTER BJ VORSTER, MINISTER OF DEFENCE, PW BOTHA, AND THE CHIEF OF THE SADF, GENERAL MAGNUS MALAN, TO BE RESPONSIBLE FOR THE PERPETRATION OF GROSS HUMAN RIGHTS VIOLATIONS IN THE CASE OF THE MARIENTAL DETAINEES. IT ALSO REGARDS AS INDIRECTLY RESPONSIBLE (DOLUS EVENTUALIS) ALL THOSE PRESENT AT THE SSC MEETING OF 23 APRIL 1979.

Reference 375 - 0.01% Coverage

106 Hall's action in killing the three was a gross violation of human rights for which he applied for amnesty. His commanding officer, whom he names but whom the Commission cannot identify as he has not applied for amnesty, is likewise accountable. So too is the command structure of the SADF at the time.

Reference 376 - 0.01% Coverage

112 Civilians were routinely harassed, intimidated and beaten by security forces in the operational areas, especially by Koevoet members in pursuit of SWAPO guerrillas. Many were killed during such operations, either by accident (caught in crossfire) or deliberately. Sometimes the human rights abuses involved

detention under emergency proclamations, although it was often difficult to determine when the emergency regulations had been invoked as, under their provisions, any member of the security forces could summarily detain any South West African. Often intimidation happened as a result of a belief that the local population were

Reference 377 - 0.01% Coverage

116 The police unit Koevoet, as noted above, was responsible for many human rights abuses in South West Africa. The unit was set up by Brigadier Hans Dreyer of the SAP Security Branch in June 1979. While its officers were mainly white South African policemen, the unit recruited mostly from the local black South West African population and eventually numbered about 1 000. Cast in the mould of the Portuguese Flechas and Rhodesian Selous Scouts, Koevoet was established as a mobile unit, using specially designed Casspirs (armoured personnel carriers) to gather intelligence, track guerrillas and then kill them.

Reference 378 - 0.01% Coverage

125 In toto, these fourteen officers were involved in 1 754 contacts in which 3 323 individuals were killed (an average of nearly two per contact) and only 104 prisoners were taken. The ratio of prisoners to fatalities was thus in the region of 1:32. Heitman describes as Koevoet's "most successful single contact" an encounter in which "34 out of 34 insurgents"¹⁰ were killed. THE COMMISSION FINDS THAT THE KOEVOET UNIT WAS RESPONSIBLE FOR THE PERPETRATION OF GROSS HUMAN RIGHTS VIOLATIONS IN SOUTH WEST AFRICA AND ANGOLA. THESE VIOLATIONS AMOUNTED TO A SYSTEMATIC PATTERN OF ABUSE WHICH ENTAILED DELIBERATE PLANNING BY THE LEADERSHIP OF THE SAP. THE COMMISSION FINDS THE SOUTH AFRICAN GOVERNMENT, THE SAP AND THE MINISTER OF LAW AND ORDER ACCOUNTABLE. THE COMMISSION FINDS FURTHER THAT THE BOUNTY POLICY OF THE SAP, BY WHICH MEMBERS OF KOEVOET WERE MONETARILY REWARDED FOR CERTAIN OF THEIR ACTIONS, SERVED AS A POSITIVE INDUCEMENT FOR THE COMMISSION OF GROSS VIOLATIONS OF HUMAN RIGHTS, INCLUDING KILLING.

Reference 379 - 0.01% Coverage

141 On 12 September 1989, Advocate Anton Lubowski was shot dead outside his home in Windhoek. At the time, he was the secretary general of SWAPO and the highest-ranking white person in the organisation. One human rights violation submission and two amnesty applications were made to the Commission on this case. The human rights violation submission was made by Ms Molly Lubowski, the deceased's mother. She appealed to the Commission to identify her son's killers and to clear him of allegations that he was a South African MI agent.

Reference 380 - 0.01% Coverage

157 Finally, the Commission took note of two factors. The first is the lack of consensus on this issue among those connected to MI structures in South West Africa. The second is a question as to why the agency would have paid a considerable sum of money to someone they were on the point of killing. THE COMMISSION FINDS THAT THE ALLEGATION THAT MR ANTON LUBOWSKI WAS A PAID INFORMER OF SOUTH AFRICAN MILITARY INTELLIGENCE IS UNPROVEN AND THAT HE IS CLEARED OF THE ALLEGATION. THE COMMISSION FURTHER FINDS THAT THE ACTIVITIES OF THE SADF AND THE SAP IN THE FORMER SOUTH WEST AFRICA BETWEEN 1966 AND 1989 LED TO GROSS VIOLATIONS OF HUMAN

RIGHTS ON A VAST SCALE. THE COMMISSION FINDS THAT SUCH ACTIVITIES CONSTITUTED A SYSTEMATIC PATTERN OF ABUSE WHICH ENTAILED DELIBERATE PLANNING ON THE PART OF THE FORMER CABINET, THE SSC AND THE LEADERSHIP OF THE SAP AND SADF. THE COMMISSION FINDS THAT THESE INSTITUTIONS AND THEIR MEMBERS ARE ACCOUNTABLE FOR THE AFORESAID GROSS VIOLATIONS OF HUMAN RIGHTS.

Reference 381 - 0.01% Coverage

287 On Lesia's return to South Africa, he voluntarily gave a statement to a human rights organisation in which he confirmed his role as an operative handled by MI agents known to him only as Becker and Brown. He confirmed that he had taken to Mozambique a booby-trapped television supplied to him by Becker.

Reference 382 - 0.01% Coverage

THE COMMISSION FINDS THAT, DURING THE PERIOD 1963–89, THE SADF AND THE SAP PLANNED AND ENGAGED IN A NUMBER OF UNCONVENTIONAL MILITARY OPERATIONS, CROSS-BORDER RAIDS, ABDUCTIONS, ASSASSINATIONS AND ATTACKS ON PEOPLE AND PROPERTY BEYOND THE BORDERS OF SOUTH AFRICA. SUCH ACTIVITIES OF THE SAP AND THE SADF LED TO GROSS VIOLATIONS OF HUMAN RIGHTS ON A WIDE SCALE. THE COMMISSION FINDS THAT SUCH ACTIVITIES OF THE SAP AND SADF CONSTITUTED A SYSTEMATIC PATTERN OF ABUSE WHICH ENTAILED DELIBERATE PLANNING ON THE PART OF THE FORMER CABINET, THE SSC AND THE LEADERSHIP OF THE SAP AND SADF. THE COMMISSION FINDS THESE INSTITUTIONS AND THEIR MEMBERS ACCOUNTABLE FOR THE AFORESAID GROSS VIOLATIONS OF HUMAN RIGHTS.

Reference 383 - 0.01% Coverage

TIONS, PERPETRATED GROSS VIOLATIONS OF HUMAN RIGHTS, INCLUDING KILLINGS, AGAINST BOTH SOUTH AFRICAN AND NON-SOUTH AFRICAN CITIZENS. THE COMMISSION FINDS THAT THE ACTIVITIES OF THE CCB CONSTITUTED A SYSTEMATIC PATTERN OF ABUSE WHICH ENTAILED DELIBERATE PLANNING ON THE PART OF THE LEADERSHIP OF THE CCB AND THE SADF. THE COMMISSION FINDS THESE INSTITUTIONS AND THEIR MEMBERS ACCOUNTABLE FOR THE AFORESAID GROSS VIOLATIONS OF HUMAN RIGHTS.

Reference 384 - 0.01% Coverage

THE COMMISSION FINDS THAT ALL OF THE ABOVE OPERATIONS CONSTITUTED VIOLATIONS OF THE SOVEREIGNTY OF THE COUNTRIES INVOLVED AND AN INFRINGEMENT OF THE PRINCIPLES OF INTERNATIONAL LAW. THEY ALSO INVOLVED GROSS VIOLATIONS OF THE HUMAN RIGHTS OF ALL THOSE KILLED AND INJURED IN THESE ATTACKS, IRRESPECTIVE OF THEIR STATUS AS TRAINED COMBATANTS IF SUCH COMBATANTS WERE ATTACKED IN A NON-COMBAT SITUATION. THE COMMISSION FINDS THAT THE OPERATIONS CONSTITUTED A SYSTEMATIC PATTERN OF ABUSE WHICH ENTAILED DELIBERATE PLANNING ON THE PART OF THE FORMER CABINET, THE STATE SECURITY COUNCIL AND THE LEADERSHIP OF THE SADF AND THE SAP. THE COMMISSION FINDS THESE INSTITUTIONS AND THEIR MEMBERS ACCOUNTABLE FOR THE AFORESAID GROSS VIOLATIONS OF HUMAN RIGHTS.

Reference 385 - 0.01% Coverage

464 While many of the actions described in this section were not in and of themselves gross human rights violations, they were state-directed acts of extra-territorial aggression and a component of the South African government's counter-revolutionary warfare strategy. They complemented the killings and other gross violations of human rights described earlier and are included as part of the requirement to provide as complete a picture as possible.

Reference 386 - 0.01% Coverage

THE COMMISSION FINDS THAT THE ATTEMPT TO OVERTHROW THE SEYCHELLES GOVERNMENT WAS AN OPERATION UNDERTAKEN BY SENIOR OPERATIVES OF THE NIS AND THE DEPARTMENT OF MILITARY INTELLIGENCE WITH THE COLLUSION OF ELEMENTS WITHIN THE SADF. AS SUCH, IT WAS A VIOLATION OF INTERNATIONAL LAW AND AN INFRINGEMENT OF THE SOVEREIGNTY OF THE SEYCHELLES GOVERNMENT. THE DEATH OF A SEYCHELLOIS CITIZEN IN THE OPERATION WAS A GROSS HUMAN RIGHTS VIOLATION.

Reference 387 - 0.01% Coverage

2 Between 1950 and 1990, the former state restricted the lives and activities of political activists and other individuals it considered a threat through the use of orders of listing, banning and banishment. Although listing was an intrusion on civil liberties, the Commission does not regard it as a gross violation of human rights. A listed person could not be quoted, could not hold parliamentary office and could not practise law.

Reference 388 - 0.01% Coverage

IN ITS DELIBERATIONS OVER WHAT CONSTITUTED SEVERE ILL TREATMENT, THE COMMISSION HAS INCLUDED BANNING AND BANISHMENT ORDERS. IT IS THUS THE FINDING OF THE COMMISSION THAT ALL THOSE UPON WHOM SUCH ORDERS WERE IMPOSED SUFFERED A GROSS VIOLATION OF HUMAN RIGHTS, FOR WHICH THE FORMER GOVERNMENT AND IN PARTICULAR THE MINISTERS OF JUSTICE AND LAW AND ORDER ARE HELD ACCOUNTABLE.

Reference 389 - 0.01% Coverage

ON THE BASIS OF THE ABOVE AND THE MANY HUNDREDS OF STATEMENTS FROM VICTIMS OF PUBLIC ORDER POLICING, THE COMMISSION FINDS THAT, IN RESPECT OF PUBLIC ORDER POLICING, THE SAP, SPECIFICALLY ITS CROWD-CONTROL DIVISIONS (THE RIOT AND INTERNAL STABILITY UNITS), DISPLAYED A GROSS DISREGARD FOR THE LIVES AND/OR PHYSICAL WELL-BEING OF BOTH THOSE ENGAGED IN POLITICAL ACTIVITY AS WELL AS THE GENERAL PUBLIC. THIS WAS MANIFESTED IN A TENDENCY, OFTEN THE RESULT OF HIGH-LEVEL POLITICAL PRESSURE, TO RESORT TO THE USE OF DEADLY FORCE IN SITUATIONS WHERE LESSER MEASURES WOULD HAVE SUFFICED FOR THE RESTORATION OR MAINTENANCE OF PUBLIC ORDER. THE CONSEQUENCE WAS THE NEEDLESS DEATHS OF AND INJURIES TO COUNTLESS CIVILIANS. THESE DEATHS AND INJURIES CONSTITUTED A SYSTEMATIC PATTERN OF ABUSE, AND WERE GROSS VIOLATIONS OF HUMAN RIGHTS.

Reference 390 - 0.01% Coverage

THE COMMISSION FINDS THE FOLLOWING TO BE DIRECTLY ACCOUNTABLE FOR THE GROSS VIOLATIONS OF HUMAN RIGHTS COMMITTED IN THE COURSE OF PUBLIC ORDER POLICING: MINISTERS OF POLICE/LAW AND ORDER; COMMISSIONERS OF POLICE; THE COMMANDING OFFICERS OF RIOT/INTERNAL STABILITY UNITS. FURTHER, THE COMMISSION FINDS THE CABINET DIRECTLY RESPONSIBLE FOR THE EXCESSIVE USE OF FORCE DURING THE 1976 UNREST AND INDIRECTLY RESPONSIBLE DURING OTHER PERIODS OF SOCIAL UPHEAVAL.

Reference 391 - 0.01% Coverage

76 The types of gross human rights violations attributed to the special constables and municipal policemen include sjambokkings, beatings with gun butts, general assault, injury by shooting, killing by shooting, torture in custody, sexual assault and harassment, and theft. High levels of excessive and inappropriate use of violence, often arising out of drunken behaviour, ill-discipline and personal vendettas, were reported. They retained the use of shotguns even off-duty.

Reference 392 - 0.01% Coverage

90 Special constables in several areas appear to have been recruited into hit squads. For example, in the post-1990 period, both former and serving special constables were implicated in widespread anonymous 'balaclava' killings and attacks in the western Cape, at the behest of town councillors. THE COMMISSION FINDS THAT SPECIAL CONSTABLES CONSTITUTED A PARTICULARLY POORLY TRAINED AND ILL-DISCIPLINED SECTOR OF THE SECURITY FORCES. THEIR DEPLOYMENT WAS SOON FOLLOWED BY KILLINGS, SEVERE ILL TREATMENT AND TORTURE, AS WELL AS CRIMINAL ACTS. THEIR COMMANDING OFFICERS IN THE POLICE TOOK NO VISIBLE STEPS TO CONTROL THEIR ACTIONS IN ANY MEANINGFUL WAY, DESPITE PUBLIC ALLEGATIONS AND COURT INTERDICTS CONCERNING THEIR BEHAVIOUR. THE COMMISSION FURTHER HAS EVIDENCE THAT IN CERTAIN AREAS OF THE COUNTRY THE RIOT UNITS ACTED IN CONCERT WITH SPECIAL CONSTABLES IN THE PERPETRATION OF GROSS HUMAN RIGHTS VIOLATIONS.

Reference 393 - 0.01% Coverage

THE COMMISSION FINDS THAT THE SPECIAL CONSTABLES COMMITTED GROSS HUMAN RIGHTS VIOLATIONS ON A WIDE SCALE, INCLUDING KILLING, ATTEMPTED KILLING, TORTURE, ARSON AND SEVERE ILL TREATMENT, AND THAT THESE VIOLATIONS WERE PART OF A SYSTEMATIC PATTERN OF ABUSE FOR WHICH THE FORMER GOVERNMENT AND IN PARTICULAR THE MINISTER OF LAW AND ORDER AND THE COMMISSIONER OF POLICE, ARE ACCOUNTABLE.

Reference 394 - 0.01% Coverage

91 The period 1960 to 1994 saw the systematic and extensive use of detention without trial in South Africa. Such detention was frequently conducive to the commission of gross abuses of human rights. The Human Rights Committee estimated the number of detentions between 1960 and 1990 at approximately 80 000, of which about 10 000 were women and 15 000 children and youths under the age of 18. Detention without trial represented the first line of defence of the security forces. It was only when this strategy began to fail that the killing of political opponents increased.

Reference 395 - 0.01% Coverage

THE COMMISSION FINDS THAT TORTURE AS PRACTISED BY MEMBERS OF THE SAP CONSTITUTED A SYSTEMATIC PATTERN OF ABUSE WHICH ENTAILED DELIBERATE PLANNING BY SENIOR MEMBERS OF THE SAP, AND WAS A GROSS HUMAN RIGHTS VIOLATION.

Reference 396 - 0.01% Coverage

258 Aside from Mbane's statement, the above confessions come from people held in ANC custody and thus an element of duress cannot be excluded. However, the assertion that the killing was a security force operation is common to all three versions. (See also KwaZulu/Natal regional profile.) THE COMMISSION FINDS THAT MS VICTORIA MXENGE WAS KILLED BY, OR ON THE ORDERS OF, UNKNOWN MEMBERS OF THE SECURITY FORCES, AND THAT HER DEATH WAS A GROSS HUMAN RIGHTS VIOLATION WHICH ENTAILED DELIBERATE PLANNING ON THE PART OF THE SAID SECURITY FORCES.

Reference 397 - 0.01% Coverage

THE COMMISSION FINDS THAT TOTO DWEBA WAS KILLED BY, OR ON THE ORDERS OF, UNKNOWN SECURITY FORCE MEMBERS, AND THAT HIS DEATH WAS A GROSS HUMAN RIGHTS VIOLATION WHICH ENTAILED DELIBERATE PLANNING ON THE PART OF THE SAID SECURITY FORCES.

Reference 398 - 0.01% Coverage

274 Dr Webster was a well-known human rights activist, a member of the Detainees' Parents' Support Committee (DPSC) and vice-chairperson of the Five Freedoms Forum, an affiliate of the UDF. As an anthropologist, Webster went on regular field trips to Kosi Bay in Northern Natal and it was rumoured that he had possibly stumbled on evidence of the ongoing supply of weapons to RENAMO or of ivory smuggling. The Hiemstra Commission, set up to investigate a spy-ring with military links in the Johannesburg City Council, heard evidence that Dr Webster had been under surveillance.

Reference 399 - 0.01% Coverage

314 Following the abduction and interrogation of Ms Phila Portia Ndwandwe in October 1988 (see chapters on Gross Violations of Human Rights Committed by the State outside South Africa and Exhumations in this volume), the Security Branch established that Mr Phumezo Nxiweni [EC0246/96WTK] was the commander of an MK underground structure in Durban. Hentie Botha claims that this unit was responsible for thirteen explosions in the Durban area during 1988. Nxiweni had been charged with these attacks, including the Amanzimtoti bomb, and acquitted.

Reference 400 - 0.01% Coverage

THE COMMISSION FINDS THAT, ON THE BALANCE OF PROBABILITIES, NGWENYA WAS KILLED BY MEMBERS OF THE SECURITY FORCES INVOLVED IN THIS AMBUSH, AND THAT HIS DEATH WAS A GROSS VIOLATION OF HUMAN RIGHTS.

Reference 401 - 0.01% Coverage

326 In May 1997, the Commission's Investigation Unit exhumed the bodies of two MK operatives who had been killed by security police near Piet Retief. Mr Victor Mgadi from Inanda in Durban and Mr Oupa Funani from Soweto were killed in separate incidents in 1982 after returning from Swaziland, and were

buried in unmarked graves in Thandokukhanya cemetery at Piet Retief. THE COMMISSION FINDS THAT MGADI AND FUNANI WERE KILLED AS A RESULT OF DELIBERATE PLANNING ON THE PART OF MEMBERS OF THE SECURITY POLICE, AND THAT THEIR DEATHS WERE GROSS HUMAN RIGHTS VIOLATIONS, FOR WHICH THE SECURITY BRANCH OF THE SAP IS ACCOUNTABLE.

Reference 402 - 0.01% Coverage

345 Mr Jan Seboi Sekete [KZNNT/009/FB] said he and a Mr Litabe (now deceased) were returning from the Lesotho border and were joined by Steve Bogacu of the ANC and 'Fatty' Letlaka, who had come across the river. He said they were stopped by two uniformed white men near the Caledon Park location in Ficksberg, who shot one of the men. The rest were told to "fokoff". As Sekete and Litabe left, they saw Letlaka shaking hands with the policemen and realised that it had been a set-up. Neither Letlaka nor Sekete mention a grenade. THE COMMISSION FINDS THAT BOGACU WAS KILLED BY MEMBERS OF THE SAP, THAT HIS DEATH WAS THE RESULT OF A DELIBERATE PLAN AND THAT IT WAS A GROSS VIOLATION OF HUMAN RIGHTS, FOR WHICH THE SAP IS HELD ACCOUNTABLE.

Reference 403 - 0.01% Coverage

431 While the Commission did not make significant headway in respect of these killings, it should be noted that the Attorney-General's investigation confirms a politically motivated killing involving the security forces. THE COMMISSION FINDS THAT ROBERT AND JEAN-CORA SMIT WERE KILLED BY MEMBERS OF THE SECURITY FORCES AND THAT THEIR DEATHS CONSTITUTE A GROSS VIOLATION OF HUMAN RIGHTS.

Reference 404 - 0.01% Coverage

510 The Commission received a number of amnesty applications detailing the direct involvement of members of the security forces in acts of sabotage and arson, including an application by former Minister of Law and Order Adriaan Vlok and Security Branch head General Johan van der Merwe, implicating State President PW Botha. While many of these cases did not result in gross violations of human rights, some can be classified as attempted killings and therefore gross violations.

Reference 405 - 0.01% Coverage

THE COMMISSION FINDS THAT THE DEATHS OF THE OVER SIXTY PEOPLE AND THE SEVERE ILL TREATMENT SUFFERED BY THOSE PERSONS WHOSE HOUSES WERE DESTROYED IN THE PERIOD SPECIFIED ABOVE, WERE GROSS HUMAN RIGHTS VIOLATIONS FOR WHICH, INTER ALIA, THE FOLLOWING STATE BODIES, STATE INSTITUTIONS OR INFORMAL GROUPINGS ARE HELD ACCOUNTABLE: THE SSC; THE WESTERN PROVINCE JOINT MANAGEMENT CENTRE ; THE SADF'S WESTERN PROVINCE COMMAND COMMANDED BY BRIGADIER AK DE JAGER; THE SAP, IN PARTICULAR THE RIOT UNIT; THE SECURITY BRANCH IN THE WESTERN CAPE, HEADED BY BRIGADIER SJ STRYDOM; THE NIS; THE WESTERN CAPE DEVELOPMENT BOARD, AND WITDOEK LEADERS MR JOHNSON NGXOBONGWANA, MR SAM NDIMA AND MR PRINCE GOBINGCA.

Reference 406 - 0.01% Coverage

597 The Eagles are frequently referred to in SSC documentation as a model of contramobilisation. Former State President FW de Klerk stated that none of the projects exposed in 1991 were involved in the gross

violation of human rights. However, there are several known violations linked to the Eagles. The Eagles came into conflict with UDF youth organisations, SAYCO in particular, and acted against UDF campaigns. They were involved in repressive activities, such as pointing out activists, launching arson and petrol bomb attacks on activists' homes (including that of Ms Winnie Mandela), and disrupting political meetings.

Reference 407 - 0.01% Coverage

1 The Commission has analysed the human rights violations committed by the liberation and mass movements by grouping the violations in the following categories: a Violations committed in the course of the armed struggle by armed combatants; b Violations committed by liberation movements against their own members or against suspected spies or dissidents within their ranks, usually outside South Africa;

Reference 408 - 0.01% Coverage

NONETHELESS, THE COMMISSION DREW A DISTINCTION BETWEEN A 'JUST WAR' AND 'JUST MEANS' AND HAS FOUND THAT, IN TERMS OF INTERNATIONAL CONVENTIONS, BOTH THE ANC, ITS ORGANS THE NATIONAL EXECUTIVE COUNCIL (NEC), THE NATIONAL WORKING COMMITTEE (NWC), THE REVOLUTIONARY COUNCIL (RC), THE SECRETARIAT AND ITS ARMED WING UMKHONTO WESIZWE (MK), AND THE PAC AND ITS ARMED FORMATIONS POQO AND THE AZANIAN PEOPLE'S LIBERATION ARMY (APLA), COMMITTED GROSS VIOLATIONS OF HUMAN RIGHTS IN THE COURSE OF THEIR POLITICAL ACTIVITIES AND ARMED STRUGGLES, ACTS FOR WHICH THEY ARE MORALLY AND POLITICALLY ACCOUNTABLE.

Reference 409 - 0.01% Coverage

3 The Commission recognises that it is able to make some very detailed observations and findings about the abuse of human rights in the military camps of the ANC owing to the fact that the ANC had earlier initiated a number of its own enquiries, namely the Stuart report, an investigation into the death of Thami Zulu (both internal ANC commissions) and the Skweyiya and Motsuenyane Commissions. The ANC also made extremely detailed submissions to the Commission.

Reference 410 - 0.01% Coverage

6 Following the banning of the ANC in 1960, the organisation established an armed wing, Umkhonto weSizwe ('spear of the nation'), popularly known as MK. MK engaged in acts of war from 1961 to 1990 when, following its unbanning on 2 February, negotiations commenced. The armed struggle was suspended in August 1990. The Commission has examined the gross violations of human rights allegedly perpetrated by members of the ANC and MK. Particular attention has been paid to violations committed by MK in planned and unplanned offensive operations; violations against perceived spies, informers and 'collaborators' within its own ranks; violations against other parties in the course of the 'mass struggle' of the 1980s, and violations against other parties after the legalisation of the ANC in February 1990.

7 In the course of the armed struggle, a number of military actions took place which resulted in the death or injury of civilians, and where gross violations of human rights can be said to have been committed, despite ANC policy to avoid unnecessary loss of life. Police statistics indicate that, in the period 1976 to

Reference 411 - 0.01% Coverage

WHILE RECOGNISING THAT SUCH OPERATIONS WERE FREQUENTLY UNDERTAKEN IN RETALIATION FOR RAIDS BY THE FORMER SOUTH AFRICAN GOVERNMENT INTO NEIGHBOURING COUNTRIES, THE COMMISSION FINDS THAT SUCH UNPLANNED OPERATIONS OFTEN RESULTED IN THE PERPETRATION OF GROSS VIOLATIONS OF HUMAN RIGHTS IN THAT THEY CAUSED CIVILIAN LOSS OF LIFE AND INJURIES. THE 1977 GOCH STREET SHOOT-OUT AND THE 1980 SILVERTON BANK SIEGE ARE REGARDED BY THE COMMISSION IN THIS LIGHT.

Reference 412 - 0.01% Coverage

IN THE COURSE OF THE ARMED STRUGGLE, THE ANC THROUGH ITS ARMED FORMATION, MK, PLANNED AND UNDERTOOK MILITARY OPERATIONS WHERE, THOUGH THE INTENDED TARGET WAS IDENTIFIED AS A 'MILITARY' OR 'SECURITY FORCE' ONE, MISTAKES WERE MADE FOR A VARIETY OF REASONS, INCLUDING POOR INTELLIGENCE AND RECONNAISSANCE. THE CONSEQUENCE IN THESE CASES, SUCH AS THE MAGOO'S BAR AND THE DURBAN ESPLANADE BOMBINGS, WERE GROSS VIOLATIONS OF HUMAN RIGHTS IN THAT THEY RESULTED IN INJURIES TO AND THE DEATHS OF CIVILIANS. THE COMMISSION FINDS THE ANC RESPONSIBLE FOR THE PERPETRATION OF GROSS HUMAN RIGHTS VIOLATIONS IN THESE INSTANCES.

Reference 413 - 0.01% Coverage

THE COMMISSION FINDS, HOWEVER, THAT THE ANC'S LANDMINE CAMPAIGN IN THE RURAL AREAS OF THE NORTHERN AND EASTERN TRANSVAAL IN THE PERIOD 1985-87 CANNOT BE CONDONED IN THAT IT RESULTED IN GROSS VIOLATIONS OF HUMAN RIGHTS – CAUSING INJURIES TO AND LOSS OF LIVES OF CIVILIANS, INCLUDING FARM LABOURERS AND CHILDREN. THE COMMISSION FINDS THAT THE USE OF LANDMINES INEVITABLY LEADS TO CIVILIAN CASUALTIES AS IT DOES NOT DISCRIMINATE BETWEEN MILITARY AND CIVILIAN TARGETS AND THEREFORE CANNOT BE CONTROLLED. THE ANC IS HELD ACCOUNTABLE FOR SUCH GROSS VIOLATIONS. THE COMMISSION ACKNOWLEDGES THAT, TO ITS CREDIT, THE ANC ABANDONED THE LANDMINE CAMPAIGN IN THE LIGHT OF THE HIGH CIVILIAN CASUALTY RATE.

Reference 414 - 0.01% Coverage

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 'COLLABORATORS' BY THE ANC AND REGARDED AS LEGITIMATE TARGETS TO BE KILLED. THE COMMISSION DOES NOT ACCEPT THE LEGITIMISATION OF SUCH INDIVIDUALS AS MILITARY TARGETS AND FINDS THAT THE EXTRA-JUDICIAL KILLINGS OF SUCH INDIVIDUALS CONSTITUTED INSTANCES OF GROSS VIOLATIONS OF HUMAN RIGHTS. FURTHER FINDINGS IN THIS REGARD WILL BE MADE BY THE AMNESTY COMMITTEE WHEN THE ABOVE CASES AND OTHERS HAVE BEEN HEARD.

Reference 415 - 0.01% Coverage

56 The Commission views armed and/or uniformed combatants on both sides as being 'legitimate targets'. The deaths of members of the security forces while on duty, armed and in uniform are not considered gross violations of human rights. However, the Commission recognises that there are many 'grey areas' in this regard, especially when dealing with unconventional guerrilla warfare, and where the security forces of the state were employing unconventional means (such as using informers, askaris and plain-clothes security police officers).

57 Between 1984 and 1987, 144 police officers were killed. According to Minister of Law and Order Adriaan Vlok, it is not possible to distinguish politically-motivated murders of police officers from others. Not all such cases can qualify as gross human rights violations, and in most such cases, the families of the deceased did not approach the Commission. Cases received by the Commission that can be classified in this way concerned the deaths of Mr Johannes van der Merwe [JB00686/02PS] and Mr Thomas Shingange [JB03383/02NPTZA] and the injuries of Mr Edmund Beck [JB00135/01GT] and Mr Welmar O'Reilly [CT03081/GAU].

Reference 416 - 0.01% Coverage

TAKING INTO ACCOUNT, FIRST, THE FACT THAT THE TARGETS OF THESE OPERATIONS WERE LARGELY SIMILAR IN THAT THEY MIRRORED SIMILAR OPERATIONS FOR WHICH THE ANC DID ACCEPT RESPONSIBILITY; SECOND, THE FACT THAT THE ANC WAS, AT THE TIME THAT THESE OPERATIONS WERE UNDERTAKEN, ENGAGED IN SIMILAR OPERATIONS FOR WHICH IT TOOK RESPONSIBILITY, AND THIRD, THE FACT THAT MANY ANC OPERATIONS WERE CHARACTERISED BY POOR STRATEGIC PLANNING AND CONTROL, THE COMMISSION FINDS THAT, ON A BALANCE OF PROBABILITIES, THESE OPERATIONS WERE UNDERTAKEN BY ANC MEMBERS ACTING IN THE NAME OF THE ORGANISATION AND THAT THEY RESULTED IN GROSS VIOLATIONS OF HUMAN RIGHTS FOR WHICH THE ANC IS HELD ACCOUNTABLE. FURTHER FINDINGS IN THIS REGARD WILL BE MADE BY THE AMNESTY COMMITTEE WHEN THE ABOVE CASES AND OTHERS HAVE BEEN HEARD.

Gross violations of human rights in the context of the 'people's war'

67 In some cases, ANC supporters were responsible for perpetrating gross violations of human rights in contravention of the express policies of the organisation. Some of the individuals responsible have applied for amnesty arguing that, although not formally under orders of the ANC, they believed they were acting in accordance with ANC strategic objectives at the time. Such acts included the killings of local councillors, police officers, alleged informers and others deemed to be 'collaborators'. Such killings sometimes involved the use of the 'necklace' method. The apportioning of accountability for such violations is a difficult matter, given the complexities and difficulties of mass organisation during the period.

Reference 417 - 0.01% Coverage

70 The fact that individual leaders of the mass movements owed allegiance to the ANC did not necessarily mean that they were all ANC members or linked to the underground network. Yet, some individuals were formal members of the ANC and were involved in the underground structures. With the blurring of the boundaries of these allegiances, it has been difficult to ascertain accountability for the various violations of human rights allegedly perpetrated in the name of the ANC during the 1980s.

Reference 418 - 0.01% Coverage

75 As a result of public statements by Chief Buthelezi that his party would not cooperate with the Commission, the Commission was unable to access any significant number of statements from Inkatha Freedom Party (IFP) members and supporters who were victims of human rights violations. The Commission went to extensive lengths to persuade the IFP to participate in its work, but with limited success. In late 1997, shortly before the cut-off date for the making of victim statements, KwaZulu-Natal premier Ben Ngubane issued a public statement encouraging IFP members who had been victims of violations to make statements to the Commission so they could qualify for financial reparations. This resulted in a small number of IFP victims coming forward.

Reference 419 - 0.01% Coverage

THE COMMISSION FINDS THAT, IN SEVENTY-SIX INCIDENTS, THE DECEASED WERE DELIBERATELY TARGETED BECAUSE THEY HELD POSITIONS WITHIN THE IFP. THE KILLINGS OF THESE IFP OFFICEBEARERS CONSTITUTE GROSS VIOLATIONS OF HUMAN RIGHTS, AMOUNTING TO A SYSTEMATIC PATTERN OF ABUSE, ENTAILING DELIBERATE PLANNING, FOR WHICH THE RESPECTIVE LOCAL STRUCTURES OF THE UDF, ANC AND MK ARE HELD ACCOUNTABLE.

Reference 420 - 0.01% Coverage

96 On 25 April 1985, the ANC national executive made a call: "Make apartheid unworkable! Make the country ungovernable!"⁴. The destruction of the Black Local Authorities and the pressure put on councillors to resign was seen as an integral part of the making the townships ungovernable. Internally, the campaign was fanned by UDF structures and was the forerunner of the campaign for the building of organs of people's power. In the process of its implementation, some people became victims of gross violations of human rights.

Reference 421 - 0.01% Coverage

'people's courts' at all times, and sometimes came under threat when they tried to do so. When crowd violence became ugly, few of the leaders of the mass movements – with the exception of some religious leaders – were brave enough to intervene. In many cases, even religious leaders failed to influence the actions of the youth militia. THE COMMISSION FINDS THAT, IN THE 1980S IN PARTICULAR, LARGE NUMBERS 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 AND ACTIVELY PROMOTED BY THE ANC. VIOLATIONS INCLUDING KILLINGS, ATTEMPTED KILLINGS, ARSON AND SEVERE ILL TREATMENT WERE COMMITTED BY ANC SUPPORTERS AGAINST URBAN COUNCILLORS AND RURAL HEADMEN, MEMBERS OF THE IFP AND OTHER PEOPLE PERCEIVED TO BE 'COLLABORATORS' OF THE SYSTEM OR ENEMIES OF THE ANC. Gross violations of human rights committed in ANC ranks and in exile

Reference 422 - 0.01% Coverage

99 The bitterness felt by those who claim to have been loyal to the ANC and the cause it represented and who felt they had been betrayed by their own Movement's inability to deal openly with such human rights abuses, is captured in the words of Mr Joe Seremane whose brother, Mr Timothy Tebogo Seremane (aka Mahamba) [JB04441/01GTSOW] was executed in Quatro camp. Joe Seremane told the Commission's special hearings of prisons in July 1997:

Reference 423 - 0.01% Coverage

Background to Human Rights Violations by the ANC in exile

Reference 424 - 0.01% Coverage

104 Between 1979 and 1989, the ANC was responsible for committing various human rights abuses upon its members in exile. Many of these abuses were committed by the ANC's security department (established in the mid-1970s) – known by the acronym NAT (for National Security) or Mbokodo/Mbokotho ('crushing boulder').

Reference 425 - 0.01% Coverage

116 On 2 December 1992, Amnesty International published a report of its own research into human rights violations by the ANC in exile. It found that the victims of extensive

Reference 426 - 0.01% Coverage

human rights abuses were in most cases members of MK. The report detailed the abuse, including the death of Mr Thami Zulu in 1989. It also reported on the killing of two former ANC detainees in South Africa: Mr Sipho Phungulwa [JB00420/01ERKWA] in Transkei in June 1990, and Mr Bongani Ntshangase in Natal on 21 May 1992.

Reference 427 - 0.01% Coverage

118 In 1993, the independent Motsuenyane Commission of Enquiry was appointed by ANC president Mr Nelson Mandela. Its terms of reference were broader than those of the Skweyiya Commission. The Motsuenyane Commission held public hearings and heard evidence from fifty witnesses in Johannesburg, including that of eleven alleged perpetrators who gave oral testimony and had the opportunity to cross-examine witnesses. The hearings were public and over 2 500 pages of testimony were received. The commissioners also made an inspection of two former ANC settlements and a United Nations High Commission for Refugees (UNHCR) refugee camp in Tanzania. The Motsuenyane Commission's comprehensive report on human rights abuses in the ANC camps was published in August 1993.

Reference 428 - 0.01% Coverage

120 It found further that the leadership did not deal adequately with the concerns and complaints of the mutineers. Arbitrary detention without trial became routine. Quatro personnel were not adequately trained and supervised and did not have the maturity or experience to deal with suspected enemy agents. There was a breakdown in communication between Mbokotho and the Officer of Justice which resulted in the continued improper detention of persons without trial. The Officer of Justice was not effective in administering the code of conduct to protect the human rights of detainees.

Reference 429 - 0.01% Coverage

126 Those who died of natural causes, accidents or were killed in combat are not considered by the Commission to be victims of human rights abuse. There were,

Reference 430 - 0.01% Coverage

however, certain cases which suggested aggravating circumstances where detainees are said to have died of 'natural causes'. In some of these, the families of those who died contest the ANC's version of how they

died. In such cases, the deponent is given the benefit of the doubt and this Commission found the missing person to be a victim of a gross violation of human rights.

127 The ANC also submitted to the Commission a list including those MK members who died “as a result of excessively harsh treatment after committing breaches of discipline” (Confidential Appendix). All these cases are considered to be gross violations of human rights. Included in this list were twenty-two names under the heading “Agents executed on order of tribunals”.

Reference 431 - 0.01% Coverage

168 In addition, it must be accepted that any confessions obtained through torture are invalid, and people who were executed as a result of such confessions must also be considered victims of a gross violation of their rights – whether or not there was substance in their conviction, and whether or not they themselves were also perpetrators of human rights violations or were indirectly responsible for such violations.

Reference 432 - 0.01% Coverage

01GTSOW], Mr Mandla Annanias Ntuli [JB06323/02PS NTULI], Mr Vuyani Mbuyiselo Malgas [JB05949/01GTSOW], Mr Johannes Bongizembe van Wyk [B029120/ 01MPMOU], Mr Robert Vusumzi Shange [JB03070/01GTSOW], Mr Takalani Matidze [CT05012/OUT] , Mr Luthando Nicholas Dyasop [JB00420/01ERKWA], Mr Gabriel Phemelo Setlhoke [JB00846/01GTSOW], Mr Amos Maxongo [EC0265/96PLZ], Mr Gugulethu Gxekwa [EC0832/97KAR], Mr Nceba Makasi [EC2179/97NWC], Mr Tebello Motapanyane [JB00259/01GTSOW], Mr Olefile Samuel Mngqibisa [JB00311/01GTSOW], Mr Barry Qethu Mdluli [JB00522/01GTSOW], Mr George Linda Gladstone Dube [JB00155/01ERKAT], Mr Tony Lincoln Mzwandile Msomi [JB00165/99OVE], Mr Edward ‘Teddy’ [Mwase) Williams [EC0247/96WTK], Mr Patrick Mncedisi Hlongwane [AM8028/97], Mr Mpho Samuel Motjuoadi [JB02199/02PS], Mr Lita Nombango Mazibuko [JB04442/01MPWES] and Mr Connie Khunjuzwa Ndesi [JB05902/01GTSOWNDESI]. ON THE BASIS OF THE EVIDENCE AVAILABLE TO IT, THE COMMISSION FINDS THAT THE ANC, PARTICULARLY ITS MILITARY STRUCTURES WHICH WERE 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 – SUSPECTED ‘ENEMY AGENTS’ AND MUTINEERS. THE COMMISSION FINDS THAT ‘SUSPECTED AGENTS’ WERE ROUTINELY SUBJECTED TO TORTURE AND OTHER FORMS OF SEVERE ILL-TREATMENT AND THAT THERE WERE CASES WHERE SUCH INDIVIDUALS WERE CHARGED AND CONVICTED BY TRIBUNALS WITHOUT PROPER ATTENTION TO DUE PROCESS BEING AFFORDED THEM, SENTENCED TO DEATH AND EXECUTED. THE COMMISSION FINDS THAT THESE WERE ACTS IN WHICH THE INDIVIDUALS SO AFFECTED HAD THEIR HUMAN RIGHTS GROSSLY VIOLATED. LIKEWISE, THE COMMISSION FINDS THAT THE FAILURE TO COMMUNICATE PROPERLY WITH THE FAMILIES OF SUCH VICTIMS CONSTITUTED CALLOUS AND INSENSITIVE CONDUCT. THE COMMISSION ALSO FINDS THAT ALL MUTINEERS WHO WERE EXECUTED AFTER CONVICTION BY MILITARY TRIBUNAL, IRRESPECTIVE OF WHETHER THEY WERE AFFORDED PROPER LEGAL REPRESENTATION AND ADEQUATE DUE PROCESS, SUFFERED GROSS VIOLATIONS OF THEIR HUMAN RIGHTS.

WITH REGARD TO ALLEGATIONS OF TORTURE, THE COMMISSION FINDS THAT, ALTHOUGH IT WAS NOT ANC POLICY TO USE TORTURE, THE SECURITY DEPARTMENT OF THE ANC ROUTINELY USED TORTURE TO EXTRACT INFORMATION AND CONFESSIONS FROM THOSE BEING HELD IN CAMPS, PARTICULARLY IN THE PERIOD 1979-89. THE COMMISSION HAS TAKEN NOTE OF THE VARIOUS FORMS OF TORTURE DETAILED IN THE MOTSUENYANE COMMISSION AND FINDS THAT THEY AMOUNTED TO THE DELIBERATE INFLICTION OF PAIN AND/OR SEVERE ILL TREATMENT IN THE FORM OF DETENTION IN SOLITARY CONFINEMENT AND/OR THE DELIBERATE WITHHOLDING OF FOOD AND WATER AND/OR

MEDICAL CARE AND, AS SUCH, AMOUNTED TO THE PERPETRATION OF GROSS VIOLATIONS OF HUMAN RIGHTS.

Reference 433 - 0.01% Coverage

181 Evidence before the Commission indicates that gross violations of human rights were committed by the PAC in the course of its armed struggle. Formed in 1959 as an Africanist breakaway from the ANC, the involvement of the PAC in the antipass law campaign of 1960 led to its banning, together with the ANC, in 1960. Like the ANC, it established an organisational structure in exile and established camps for the military training of members of its armed wing APLA. It engaged in a limited armed struggle which resulted in few human rights violations inside South Africa. It was plagued with internal divisions and leadership conflicts which rendered it ineffective and led to the commission of gross human rights violations against its own members in exile.

Reference 434 - 0.01% Coverage

184 The commission of human rights violations by PAC members began with the activities of Poqo in the early 1960s, whose campaign was to liberate the country with 'traditional weapons'. In the Western Cape townships, in particular in Langa, Poqo militants conducted a house-to-house membership drive. In what became a reign of terror, residents were coerced into 'enlisting' and paying a two shillings and sixpence joining fee. In September 1962, policemen investigating the conscription campaign were attacked by Poqo members. They fired into a crowd, killing one and wounding two others; 133 people were arrested.

Reference 435 - 0.01% Coverage

In its submission to the Commission, the PAC claims that "a whole platoon of the SAP threw away their guns. Unfortunately none of our combatants could use them effectively". As this was a military encounter in which both sides were armed, neither the injuries to policemen nor the deaths of the Poqo members can be considered to be gross human rights violations.

Reference 436 - 0.01% Coverage

193 While the Commission finds that this attack on civilians was a gross violation of human rights, no families of victims of the attack approached the Commission.

Reference 437 - 0.01% Coverage

199 Mr Morgan Nogaga Gxekwa [AM5686/97] applied for amnesty as a founder member of both Poqo and APLA. WHILE THE COMMISSION TAKES NOTE OF THE EXPLANATION TENDERED BY THE PAC THAT ITS ACTIVITIES IN THE EARLY 1960S 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 ITS (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:

Reference 438 - 0.01% Coverage

203 The PAC's strategy of a protracted people's war, involving the infiltration of guerrillas into rural areas, resulted in a number of armed confrontations and skirmishes with the security forces. A limited number of armed attacks in townships resulted in injuries or deaths to members of the security forces. Violations committed in the course of armed combat are not considered by the Commission to be gross violations of human rights.

Reference 439 - 0.01% Coverage

209 The Commission received amnesty applications from Mr Barowsky Phumelele Masilela [AM3146/96] for an armed robbery in Springs in 1988 in which one person was injured; from Mr Lucky Clement Luthuli [AM3435/96] for the killing and robbing of Mr Lucas Botha in April 1987 in Durban with the intention of obtaining firearms and money and from Mr Lefu John Molati [AM2092/96] for an attack in February 1989 in which Mr Johannes Hermanus Boonzaaier was shot and killed, his wife Ms Mercia Maureen Boonzaaier assaulted and the couple robbed of their bakkie. THE COMMISSION FINDS THAT THE TARGETING OF CIVILIANS FOR KILLING WAS NOT ONLY A GROSS VIOLATION OF THE HUMAN RIGHTS OF THOSE AFFECTED BUT A VIOLATION OF INTERNATIONAL HUMANITARIAN LAW. THE COMMISSION NOTES BUT REJECTS THE PAC'S EXPLANATION THAT ITS KILLING OF 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.

Reference 440 - 0.01% Coverage

Constant vicious beatings and floggings of cadres who did not conform to the new militarist discipline replaced the more democratic culture which respected the human rights of the individual APLA soldiers. Members of the

Reference 441 - 0.01% Coverage

218 Isaacs' claims are viewed with suspicion by some PAC members, including victims of abuse he refers to in his manuscript. He is accused of having deliberately mixed cases of PAC cadres who died in genuine accidents with cases of abuse of human rights.

Reference 442 - 0.01% Coverage

We have never had a single detention camp, prison or any form of institution that was employed to violate members' human rights. No single individual can genuinely claim any experience of systematic torture, abuse or detention in any of our facilities or camps. (Brigadier Dan Mofokeng).

Reference 443 - 0.01% Coverage

225 The PAC's armed struggle continued after its legalisation in February 1990 and APLA – which had up to that time managed very few attacks within South Africa – secured bases in the Transkei from which they conducted a series of attacks on civilian targets between 1992 and 1994. On 16 January 1994, the PAC announced it had suspended the armed struggle. THE COMMISSION FINDS THAT A NUMBER OF PAC MEMBERS WERE EXTRA-JUDICIALLY KILLED IN EXILE, PARTICULARLY IN CAMPS IN TANZANIA BY APLA CADRES ACTING ON THE INSTRUCTIONS OF ITS HIGH COMMAND. IT FINDS 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.

Reference 444 - 0.01% Coverage

226 No evidence was presented to the Commission that the military operations of the Azanian National Liberation Army (AZANLA), the armed wing of the Black Consciousness Movement of Azania, resulted in any gross violations of human rights. The exception is a case of abduction, for which the member responsible applied for amnesty. The person convicted of this act kidnapped two civilians in order to ensure their safety when he burned down the petrol station. No harm was caused to the civilians (or to any other person). Mr Mzwandile Nkwenkwe Alfred Madela, [AM0038/96] and Mr Andile Samuel Katiso Solo [AM0193] applied for amnesty.

Reference 445 - 0.01% Coverage

227 The Commission received no human rights violation statements in respect of members of AZANLA killed in exile by fellow members. However, there was a mutiny in the AZANLA camp at the Dukwe refugee settlement in Botswana in late 1978. The Commission was told that mutiny resulted from –

Reference 446 - 0.01% Coverage

THE COMMISSION ACKNOWLEDGES THAT IT WAS NOT THE POLICY OF THE UDF TO ATTACK AND KILL POLITICAL OPPONENTS BUT THAT, IN THE CONTEXT OF WIDESPREAD STATE-SPONSORED OR DIRECTED VIOLENCE AND A CLIMATE OF POLITICAL INTOLERANCE, MEMBERS AND SUPPORTERS OF UDF AFFILIATE ORGANISATIONS OFTEN COMMITTED GROSS VIOLATIONS OF HUMAN RIGHTS. THE UDF FACILITATED THE COMMISSION OF SUCH GROSS VIOLATIONS OF HUMAN RIGHTS IN THAT LEADERS, OFFICE-BEARERS AND MEMBERS OF THE UDF ACTED IN A MANNER, THROUGH THEIR CAMPAIGNS, PUBLIC STATEMENTS AND SPEECHES WHICH HELPED CREATE A CLIMATE IN WHICH MEMBERS OF ORGANISATIONS AFFILIATED TO THE UDF BELIEVED 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.

Reference 447 - 0.01% Coverage

THE COMMISSION FINDS THAT FACTORS REFERRED TO IN THE PARAGRAPH ABOVE LED TO WIDESPREAD EXCESSES, ABUSES AND GROSS VIOLATIONS OF HUMAN RIGHTS BEING COMMITTED BY SUPPORTERS AND MEMBERS OF ORGANISATIONS AFFILIATED TO THE UDF INCLUDING:

Reference 448 - 0.01% Coverage

- 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 DESCRIBED ABOVE.
- FAILED TO SANCTION OR DISCIPLINE MEMBER ORGANISATIONS WHOSE MEMBERS WERE INVOLVED IN GROSS VIOLATIONS OF HUMAN RIGHTS DESCRIBED ABOVE, OR TO ENCOURAGE ITS 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 VIOLATION OF HUMAN RIGHTS COMMITTED IN ITS NAME AND COMMITTED AS A CONSEQUENCE OF ITS FAILURE TO TAKE THE STEPS REFERRED TO ABOVE.

230 The association of the MDM with commission of gross violations of human rights can be divided into two broad areas. First, violations occurred as a result of organised non-violent confrontations with the state, termed 'mass action'. This includes mass protests such as marches, stay aways and consumer boycotts directed at crippling state machinery, as well as clashes among township residents. The latter was not always exclusive of the former as, in many incidents, security forces were alleged to have a hidden hand in the violent political conflicts in the townships. Nevertheless, people participating in protest actions were themselves sometimes perpetrators of human rights violations where, for example, they killed people found contravening popular decisions relating to consumer boycotts or strike actions.

Reference 449 - 0.01% Coverage

unintended consequences [which] could in some instances fall within the definition of gross violations of human rights such as assaults, loss of life and causing extreme fear among perceived and real opponents of the struggle for freedom and democracy.

Reference 450 - 0.01% Coverage

255 Like other campaigns that had "unintended consequences", the new 'people's organs' were sometimes involved in gross violations of human rights. In some townships, street committees and people's courts became notorious for flogging and beating alleged 'offenders'; some were even necklaced.

Reference 451 - 0.01% Coverage

Types of gross human rights violations by mass movements Burning and the 'necklace'

Reference 452 - 0.01% Coverage

10 The arguments for and against the homelands and the pre-1960 political developments that contributed to their establishment are not the focus of this chapter. Rather, the chapter seeks to highlight the role of various homeland security forces in the violation of human rights.

Reference 453 - 0.01% Coverage

11 The table below records the percentage, by type, of gross human rights violations that occurred in the homelands for all periods and is measured against the equivalent figures for non-homeland areas. Counts are done throughout the 1960-94 period on all ten geographical areas that were eventually to become either self-governing or independent territories.

Reference 454 - 0.01% Coverage

Number of gross human rights violations occurring in the homelands, by year and type

Reference 455 - 0.01% Coverage

FIGURE 2 Number of gross human rights violations, by year and type – national

Reference 456 - 0.01% Coverage

Percentage of gross human rights violations occurring in the homelands, by year and type

Reference 457 - 0.01% Coverage

Number of gross human rights violations that occurred in the homelands, by perpetrating organisation – all periods

Reference 458 - 0.01% Coverage

Number of gross human rights violations, by homeland – all periods.

Reference 459 - 0.01% Coverage

20 Following the successful clampdown on internal opposition, there was a period of marked economic growth. In the wake of these developments, the NP was provided with an opportunity to consolidate its control over the state. In this period of 'grand apartheid', the South African government embarked on a project of profound and widespread social engineering. From the 1960s onwards, millions of individuals were uprooted and relocated – generally to the homelands – in the process of 'consolidating' South Africa's ethnic map. Direct physical violence, accompanied by the structural violence inherent in the system of migrant labour, resulted in violations of human rights that defy easy calculation.

Reference 460 - 0.01% Coverage

Responsibility for gross violations of human rights

Reference 461 - 0.01% Coverage

Number of gross human rights violations by homeland – 1960-75

Reference 462 - 0.01% Coverage

Number of gross human rights violations in the homelands, by perpetrating organisation – 1960-75

Reference 463 - 0.01% Coverage

Responsibility for gross human rights violations

Reference 464 - 0.01% Coverage

Number of gross human rights violations, by homeland – 1976-82

Reference 465 - 0.01% Coverage

Number of gross human rights violations in the homelands, by perpetrating organisation – 1976-82

Reference 466 - 0.01% Coverage

73 Because of increased resistance, combined with the continued growth of homeland forces, the security situation in all of the homelands deteriorated dramatically. The highest number of homeland gross violations of human rights reported to the Commission was for the period 1983-1989. In addition to the increase in resistance and repression, the homelands posed increasing security concerns for the South African government, proving to be dangerously unstable. In a number of cases, the very security forces created by South Africa to defend homeland rule rose up to challenge incumbent homeland governments. In Bophuthatswana and the Ciskei, South African forces put down several attempted coups. Meanwhile, South African security force personnel were implicated in fuelling a series of cross-border raids between Ciskei and Transkei during the SADF's Operation Katzen. By the end of the period, Major General Bantu Holomisa of the TDF had engineered the first successful coup when he deposed Stella Sigcau's Transkei government in December 1987. More coups would follow in the 1990s.

Reference 467 - 0.01% Coverage

80 In accordance with their increased size and expanded budgets, homeland forces played a significant part in this period's intensifying repression. As examined in greater detail in the section below, gross violations of human rights statements received by the Commission confirm the central role of homeland police forces

Reference 468 - 0.01% Coverage

in security operations. In a period that recorded the most gross violations of human rights, almost half of all perpetrators identified by victims were affiliated to a homeland police force.

Reference 469 - 0.01% Coverage

Responsibility for gross violations of human rights

Reference 470 - 0.01% Coverage

Number of gross violations of human rights, by homeland – 1983-89

Reference 471 - 0.01% Coverage

Number of gross violations of human rights in the homelands by

Reference 472 - 0.01% Coverage

98 Police in homeland areas acted with extraordinary brutality, possibly because these regions were so often ignored by the rest of the country. For example, the Pondoland Revolt of 1960 and events in subsequent years elicited a venomous backlash from the police (still the SAP in the early years), with police assaulting detainees so badly that it appears they cared little whether detainees lived or died. The Human Rights Commission (HRC) records thirty-two deaths in detention between 1976 and 1982. The

Eastern Cape accounted for eight of these (25 per cent) with five of the eight in the two homelands (four in Transkei, one in Ciskei and three in Port Elizabeth).

Reference 473 - 0.01% Coverage

4 Nicholas Haysom, Ruling with the whip: Report on the violation of human rights in the Ciskei, CALS, October 1983. VOLUME 2 CHAPTER 5 The Homelands from 1960 to 1990

Reference 474 - 0.01% Coverage

15 See, for example, Africa Watch Ciskei: Ten years on - Human Rights and the fiction of 'independence', Vol III, Issue no. 16, 20 December 1991.

Reference 475 - 0.01% Coverage

and gunned down; only Nkume, who seemed to have accidentally hitched a lift with the group, survived. The killers were SAP member Sergeant Mpumelelo Madliwa from East London, TPF member Constable Bongani Wana from Umtata and three askaris; they later told an inquest they had been armed with irregular weapons, used false vehicle registration numbers and had fired because they thought the guerrilla was going to attack them. They justified the killing to the inquest by explaining that Mgibe was a guerrilla; Mayaphi and Sangoni appear to have been targeted because of their connections to the terrorism trial and a prominent firm of human rights lawyers respectively.

Reference 476 - 0.01% Coverage

195 This section deals with the former KwaZulu self-governing homeland and with the institutions associated with the homeland responsible for perpetrating gross human rights violations in the homeland. These include the KwaZulu government, the KZP and Inkatha (later renamed the IFP). Evidence before the Commission of the many cases where members and supporters of Inkatha and the IFP were victims of aggression by supporters of the United Democratic Front (UDF), the African National Congress (ANC) and its self-defence units (SDUs) is documented in the Liberation Movements chapter of this volume.

Reference 477 - 0.01% Coverage

198 Inkatha dominated the KwaZulu government (both its executive and its bureaucracy) to the extent that the government and Inkatha became interchangeable concepts. The organisation effectively ruled the KwaZulu government as a one-party state and used KwaZulu government resources and finances to fund Inkatha partypolitical activities and in the execution of gross human rights violations against non-Inkatha supporters. The KZP came into existence in 1981 and was disbanded in 1994 following the April 1994 elections. Chief Buthelezi was the only ever serving Minister of Police in KwaZulu. Violations committed by the KZP are dealt with later in this report.

Reference 478 - 0.01% Coverage

225 An Inkatha-supporting and state-sponsored vigilante group known as the A-Team was set up with the help of the SAP Riot Unit, in 1983/4 in the Chesterville township, Durban. Statements made to the Commission allege that the A-Team was responsible for the perpetration of human rights abuses in the

township between 1985 and 1989. These included at least ten killings, several cases of attempted killing and many incidents of arson and severe ill treatment.

Reference 479 - 0.01% Coverage

249 Witnesses who did not testify in the 1996 criminal trial testified before the hearing, and the Commission has made a comprehensive finding on the Caprivi trainee project (see Volume Five). In brief, the Commission found that the South African government provided Inkatha with a hit squad, and provided training, financial and logistical management for the project. Further, the Commission found that accountability for the human rights violations that flowed from the establishment of the hit squad lay with twenty-two people from the State Security Council, Military Intelligence, Inkatha and the KZP.

Reference 480 - 0.01% Coverage

263 In June 1992, the Durban branches of the Legal Resources Centre (LRC) and the Human Rights Commission (HRC) published a report entitled *Obstacle to Peace: the Role of the KwaZulu Police in the Natal Conflict*. In the report, the HRC and LRC used court records, affidavits, witness statements and other documents to describe numerous abuses by the KZP, which contributed to the conflict in Natal. Among the abuses documented were the following :

Reference 481 - 0.01% Coverage

265 A study of violent incidents between January and June 1991, carried out by the Centre of Social and Development Studies of the University of Natal and the Human Sciences Research Council, reported that the KZP played an aggravating and negative role in 55 per cent of the events at which members of the force were present. The KwaZulu government countered allegations of this type in its submission to the Goldstone Commission by stating that there were complaints against the KZP in only 5 per cent of the communities in which it was the police force. However, human rights organisations attributed this to the reluctance of

Reference 482 - 0.01% Coverage

270 A number of other KZP members gained particular notoriety for killing people perceived to be ANC/UDF sympathisers and appeared to be immune from prosecution. Two examples of such police officers are Detective Constable Sipiwe Mvuyane from Umlazi, who on his own admission killed approximately 50 people, and Constable Khethani Shange from KwaMashu, who was jailed for several murders. Their involvement in serious human rights abuses has been extensively documented in other publications.

Reference 483 - 0.01% Coverage

277 The vast majority of cases of alleged KZP involvement in gross human rights violations reported to the Commission occurred post-February 1990. The victims were almost exclusively people perceived to be sympathetic towards the ANC. The exception was a handful of KZP members who were eliminated by their own colleagues after they refused to cover up Inkatha or KZP criminal activity.

Reference 484 - 0.01% Coverage

279 The role of the IFP in the political violence in the early nineties is dealt with under the relevant sections of the Commission's report. In brief, the IFP was found to be the foremost perpetrator of gross human rights violations in KwaZulu and Natal during this period. Approximately 9 000 gross human rights violations were perpetrated by Inkatha in KwaZulu and Natal from 1990 to May 1994. This constituted almost fifty per cent of all violations reported to the Commission's Durban office for this period and over one-third of the total number of gross human rights violations reported for the thirty-four-year period of the Commission's mandate.

280 The Commission has made a finding that members and supporters of the IFP were responsible, together with sections and members of the state's security forces, for committing gross violations of human rights in the event which has come to be known as the Seven Day War which took place in the greater Edendale area outside Pietermaritzburg in the seven days from Sunday, 25 March 1990. In

Reference 485 - 0.01% Coverage

285 Inkatha supporters were also responsible for the commission of gross human rights violations in the province of KwaZulu/Natal in the run-up to the 1994 elections, when the IFP engaged in a campaign to disrupt the electoral process. During this period, Inkatha received arms and ammunition from right-wing organisations as well as sections of the security forces and embarked upon paramilitary training projects in which IFP supporters were trained in weapons handling and paramilitary tactics. This campaign continued until 29 April, just six days before the elections, when the IFP announced that it would contest the elections. The Commission found that approximately 3 000 gross human rights violations were perpetrated by Inkatha in KwaZulu and Natal from July 1993 to May 1994. This constituted more than 55 per cent of all violations reported to the Commission's Durban office for this period.

Reference 486 - 0.01% Coverage

a civil war. Human rights violations – committed by a variety of individuals and groups on all sides of the conflict – were numerous and widespread. Scores of people were killed, not only by the security forces deployed to repress the unrest, but also by erstwhile neighbours, fellow students, business colleagues, and even family members. In a matter of months, KwaNdebele's limited infrastructure was razed to the ground. Schools sat empty, shops and offices were gutted and entire communities lived in fear. By the winter of 1986, KwaNdebele had been irrevocably changed.

Reference 487 - 0.01% Coverage

295 Over 250 statements were made to the Commission regarding the conflict in KwaNdebele and Moutse in the mid-1980s. Collectively, the statements report almost 700 gross violations of human rights. In those statements that name a perpetrator (involving 421 alleged violations), the Imbokodo is listed as the responsible organisation in over half of the incidents. This includes allegations of Imbokodo involvement in seventeen deaths. 'Comrades' or ANC members are similarly identified as the alleged perpetrators in 14 per cent of the statements. Although the percentage of total gross human rights violations attributed to the

Reference 488 - 0.01% Coverage

333 This period of cyclical attacks and counter-attacks introduced an important dynamic into the area's pattern of human rights violations. In short, the line between victims and perpetrators blurred, as comrades and vigilantes frequently assumed both roles. The youth, relentlessly pursued by the Imbokodo

for months, initiated their own campaign against suspected vigilantes, frequently resulting in the most brutal of murders. For their part, vigilantes who had recently wielded immense power in their communities – including a de facto monopoly on force – were suddenly forced out of their homes in fear of their lives. Many of those who survived lost all of their worldly possessions in a matter of hours. Members of the cabinet, MPs in the legislative assembly and some of the wealthiest businessmen were forced to seek refuge in hastily constructed shanties in Verena. Overnight they had been exiled to the southern edge of a homeland they ostensibly still ruled.

Reference 489 - 0.01% Coverage

37 In August 1998, the Commission was given the name of a person who is alleged to have erected a decoy beacon on the side of the mountain at Mbuzini. The end of the lifespan of the Commission's Human Rights Violations Committee at the end of August 1998 prevented the investigators from corroborating this information.

Reference 490 - 0.01% Coverage

8 In 1997, the Commission decided to call the project officer, Dr Basson, for a section 29 in camera hearing, in an attempt to glean more information about the programme and its relation to human rights abuses. Before the subpoena could be enforced, the Commission was approached by the Attorney-General and the NIA. The Commission was persuaded that enforcing the subpoena could be detrimental to the case that the Attorney-General was building against Dr Basson, and that it could jeopardise state security. The Commission was requested to hold a meeting with the Deputy President, which would be organised by the NIA, to discuss these matters. The Commission agreed and Dr Basson was informed that he would not be required to appear before an investigative hearing at that stage.

Reference 491 - 0.01% Coverage

45 Dr Basson's evidence was not fully tested at the hearings because of the legal objections he raised with regard to his forthcoming criminal trial. Initially, Dr Basson's legal representatives indicated that they wished to bring a legal challenge to prevent their client from testifying at the hearing. The panel presiding over the hearing ruled, however, that Dr Basson was compelled to testify. This decision was challenged in the Cape High Court. The court upheld the panel's ruling and ordered Dr Basson to testify before the Commission on 29 July 1998, a mere three days before the mandate to hold human rights violations hearings expired.

Reference 492 - 0.01% Coverage

15 Project Marion was not put before the Kahn Committee. It was reported to the Ministers' Committee on Special Projects in October 1992 as a project designed "to put Inkatha in a position to neutralise the assault by MK2 against it" but having its mandate modified on 1 March 1990 "to maintain links with Chief Minister Buthelezi". It was reported that initial training took place in 1986 with sporadic contact and retraining until June 1989. Thereafter, Marion was meant only for financing travel costs and 'inligtingskakeling' (intelligence links) until March 1991. The books for the period until November 1991 in the 1991/92 financial year reflect only travel expenses for two security briefings of Chief Buthelezi by SADF members. Elsewhere in the report of the Commission, Project Marion is shown to have contributed directly to the perpetration of gross human rights violations.

Reference 493 - 0.01% Coverage

37 A list of covert projects, together with recommendations on each, was published in the committee's four reports. These included sixteen projects under the direction of the SADF, eleven under the Department of Foreign Affairs, nine under the SAP, seven under the NIS and one under the Department of National Education. The report does not contain any information on gross violations of human rights.

Reference 494 - 0.01% Coverage

As a result of the foregoing, the Office has always maintained and has publicly reported that the audit assurance obtained from auditing secret funds is lower than would normally be the case. It is with regret that, because of the inherent limitations of any audit as well as the particular circumstances set out earlier, the Office must accept that expenditure audited by it may have been incurred, or assets may have been acquired, from the relevant secret funds for the purpose of committing gross human rights violations.

Reference 495 - 0.01% Coverage

- SECRET FUNDING WAS USED TO PROMOTE A POLITICAL CLIMATE THAT LED DIRECTLY AND INDIRECTLY TO GROSS HUMAN RIGHTS VIOLATIONS.

Reference 496 - 0.01% Coverage

THE KAHN COMMITTEE AND THE SUBSEQUENT BODIES DID NOT PROVIDE SUFFICIENT DETAIL REGARDING STATE SECRET FUNDING. PROJECT DESCRIPTIONS PROVIDE LIMITED INFORMATION. AN EXAMPLE CAN BE MADE OF PROJECT ECHOES, WHICH IS DESCRIBED AS "AN SADF ACTIVITY AIMED AT COMBATING VERBAL ATTACKS ON ITS DUTIES AND FUNCTIONS. ITS ACTIVITY RELATES TO THE ACQUISITION OF INFORMATION IN RESPECT OF MK MAINLY, AND PASSING THIS TO THE MEDIA." THE AUDITOR-GENERAL'S REPORT DESCRIBES IT AS "MAINTAINING A SA ARMY COMMUNICATION CAPABILITY TO WITHSTAND MILITARY AIMED PROPAGANDA ACTIONS". THE COMMISSION HAS INFORMATION THAT (INTENTIONALLY OR OTHERWISE) LINKS PROJECT ECHOES TO HUMAN RIGHTS VIOLATIONS, IN THAT AN ASSASSINATION ATTEMPT ON MR DIRK COETZEE WAS FACILITATED UNDER COVER OF PROJECT ECHOES. THIS INFORMATION CONFIRMS THE OBSERVATION OF GENERAL PIERRE STEYN IN HIS INVESTIGATION INTO THE STRUCTURES AND ACTIONS OF MILITARY INTELLIGENCE, THAT IN A NUMBER OF INSTANCES, DUBIOUS AND ILLEGAL ACTIVITIES HAD BEEN SUCCESSFULLY WOVEN INTO AUTHORISED AND OFFICIAL OPERATIONS, MAKING DETECTION MORE DIFFICULT.

Reference 497 - 0.01% Coverage

Mr Brian Ngqulunga was a member of a team from Vlakplaas, led by Captain Dirk Coetzee, which murdered Griffiths Mxenge, prominent Durban human rights lawyer. Ngqulunga was later tortured and killed by his own handlers at Vlakplaas in 1990 under orders from Colonel Eugene de Kock, when they felt that he was becoming a security risk to them. Colonel De Kock applied for amnesty for the killing. Ngqulunga's family approached the Commission and requested that his body be exhumed from the farm, to be buried at the place of their choice.

Reference 498 - 0.01% Coverage

15 Ms Madikizela-Mandela was subpoenaed to appear before the Human Rights Violations Committee in terms of section 29 of the Act. The hearing was to be held in camera but, following a request by Madikizela-Mandela's counsel that the enquiry be held in public, the Commission decided to hold an in camera

Reference 499 - 0.01% Coverage

108 Madikizela-Mandela chose not to submit a statement to the Commission detailing the human rights violations she suffered at the hands of the apartheid government and its security forces. She indicated during her first in camera hearing in September 1997 that she had intended to do this, but had changed her mind as a result of the treatment she received at the hands of the Commission. She was particularly upset that she had learnt of her pending subpoena through the media, and was disconcerted that she had been subpoenaed and not invited to appear before the Commission. She considered this a hostile and unnecessary action. In this regard, the Commission handled the matter badly and must apologise to Ms Madikizela-Mandela. The Commission itself recognises the enormous contribution that she made to the liberation struggle. For over two decades she suffered anguish in her separation from her husband, as well as persecution, banishment, imprisonment, torture and harassment at the hands of the former government.

Reference 500 - 0.01% Coverage

THE COMMISSION FINDS MS WINNIE MADIKIZELA MANDELA POLITICALLY AND MORALLY ACCOUNTABLE FOR THE GROSS VIOLATIONS OF HUMAN RIGHTS COMMITTED BY THE MUFC. THE COMMISSION FINDS THAT MS MADIKIZELA-MANDELA FAILED TO ACCOUNT TO THE COMMUNITY AND POLITICAL STRUCTURES. THE COMMISSION FINDS THAT MADIKIZELA-MANDELA WAS RESPONSIBLE, BY OMISSION, FOR THE COMMISSION OF GROSS VIOLATIONS OF HUMAN RIGHTS.

Reference 501 - 0.01% Coverage

2 Two factors dominated the period 1990–94. The first was the process of negotiations aimed at democratic constitutional dispensation. The second was a dramatic escalation in levels of violence in the country, with a consequent increase in the number of gross violations of human rights.

Reference 502 - 0.01% Coverage

7 Of 9 043 statements received on killings, over half of these (5 695) occurred during the 1990 to 1994 period. These figures give an indication of violations recorded by the Commission during the negotiations process. They represent a pattern of violation, rather than an accurate reflection of levels of violence and human rights abuses. Sources other than the Commission have reported that, from the start of the negotiations in mid-1990 to the election in April 1994, some 14 000 South Africans died in politically related incidents. While Commission figures for reported violations in the earlier part of its mandate period are underrepresented in part because of the passage of time, they are under-reported in this later period because the abuses are still fresh in people's memories and closely linked into current distribution of power.

Reference 503 - 0.01% Coverage

The Human Rights Committee (HRC) estimates that, between July 1990 and June 1993, an average of 101 people died per month in politically related incidents – a total of 3 653 deaths. In the period July 1993 to April 1994, conflict steadily intensified, so that by election month it was 2.5 times its previous levels.

Reference 504 - 0.01% Coverage

29 The commission of gross violations of human rights by state security forces, homeland structures, the right wing and liberation movements are dealt with below.

Reference 505 - 0.01% Coverage

31 The majority of torture victims were short-term detainees, frequently arrested in connection with public unrest. Analysis of human rights violations statements indicates a far greater incidence of torture in rural areas and small towns than in the major urban centres. A possible explanation is the wide support enjoyed by the right wing in non-urban areas. The overwhelming majority of torture victims

Reference 506 - 0.01% Coverage

32 The Commission received human rights violations statements from two members of right-wing organisations who were victims of torture. Phillipus Cornelius Kloppers [JB06109/03WR and AM4627/97], member of the Afrikaner Weerstandsbeweging (AWB) was arrested in January 1994 in connection with the roadblock killings of December 1993 on the Ventersdorp/Randfontein Road (see below), in respect of which he also applied for amnesty. He was blindfolded, bound, 'tubed' (suffocated with a tube) and subjected to electric shock treatment. Kloppers claims to have been denied medical treatment for nineteen months and to have lost 75 per cent of the mobility in his neck.

Reference 507 - 0.01% Coverage

THE COMMISSION FINDS THAT, IN THE POST-1990 PERIOD, THE APPROACH OF THE SAP TO CROWD CONTROL AND PUBLIC ORDER POLICING REMAINED LARGELY UNCHANGED AND EVIDENCE AVAILABLE TO THE COMMISSION INDICATES THAT LARGE NUMBERS OF PEOPLE DIED AS A RESULT OF THE UNJUSTIFIED USE OF DEADLY FORCE. SUCH DEATHS ARE GROSS VIOLATIONS OF HUMAN RIGHTS FOR WHICH THE SAP IS HELD ACCOUNTABLE.

Reference 508 - 0.01% Coverage

EVIDENCE BEFORE THE COMMISSION INDICATES THAT, IN THE POST-1990 PERIOD, THE SAP CONTINUED TO CARRY OUT EXTRA-JUDICIAL KILLINGS AND ATTEMPTED KILLINGS, BOTH INTERNALLY AND EXTERNALLY. TARGETS INCLUDED HIGH-PROFILE POLITICAL ACTIVISTS PREDOMINANTLY ASSOCIATED WITH THE ANC. THE COMMISSION FINDS THAT SUCH EXTRAJUDICIAL KILLINGS TOOK THE FORM OF ASSASSINATION, AMBUSHES AND ENTRAPMENT KILLINGS, KILLINGS AND ATTEMPTED KILLINGS BY WAY OF PARCEL BOMBS. THE COMMISSION FINDS THAT THESE ACTS CONSTITUTED GROSS VIOLATIONS OF HUMAN RIGHTS FOR WHICH THE SAP ARE HELD ACCOUNTABLE.

Reference 509 - 0.01% Coverage

THE COMMISSION FINDS THAT THE KILLING OF THE FIVE YOUTHS IN THE SO-CALLED UMTATA RAID WAS A GROSS VIOLATION OF HUMAN RIGHTS FOR WHICH THE FORMER SSC AND THE FORMER SADP

ARE HELD ACCOUNTABLE. IN PARTICULAR, THE COMMISSION FINDS THAT THE WITHDRAWAL OF THE RECONNAISSANCE TEAM SOME EIGHT HOURS BEFORE THE OPERATION MEANT THAT THE SADF HAD NO REAL WAY OF KNOWING WHO WAS IN THE HOUSE AT THE TIME OF THE

Reference 510 - 0.01% Coverage

OF POLITICAL VIOLENCE, THE SAP WAS BIASED IN FAVOUR OF THE INKATHA FREEDOM PARTY AND THAT THEIR FAILURE TO INTERVENE IN AND TO PROPERLY INVESTIGATE SUCH VIOLENCE LED TO LARGE NUMBERS OF GROSS VIOLATIONS OF HUMAN RIGHTS AND STRENGTHENED THE PREVAILING CULTURE OF IMPUNITY. THE SAP IS ACCOUNTABLE FOR THE GROSS VIOLATIONS OF HUMAN RIGHTS THAT RESULTED FROM THEIR ACTIONS.

Reference 511 - 0.01% Coverage

Responsibility for gross violations of human rights

Reference 512 - 0.01% Coverage

186 Inkatha was found to be the foremost perpetrator of gross human rights violations in KwaZulu and Natal during the 1990s. Approximately 9 000 gross human rights violations were perpetrated by Inkatha in KwaZulu and Natal from 1990 to May 1994. This constituted almost 50 per cent of all violations reported to the Commission's Durban office for this period.

Reference 513 - 0.01% Coverage

192 The thousands of Inkatha supporters who took part in the armed attacks must bear overwhelming responsibility for the gross violations of human rights that took place during that week. Nonetheless, young UDF and ANC refugees must accept responsibility for starting the conflagration when, on 25 March, they stoned and attacked buses carrying IFP supporters travelling through Edendale on their return from a rally at King's Park, Durban. Tension mounted when leaders of the IFP made inflammatory speeches at further public gatherings of IFP supporters.

Reference 514 - 0.01% Coverage

THE COMMISSION MADE A COMPREHENSIVE FINDING ON THE SEVEN DAY WAR AND ON THE ACCOUNTABILITY OF THE PRIMARY ROLE-PLAYERS IN A CONFLICT THAT RESULTED IN THE COMMISSION OF MANY HUNDREDS OF GROSS VIOLATIONS OF HUMAN RIGHTS. THE ROLE-PLAYERS INCLUDE: MEMBERS AND SUPPORTERS OF INKATHA, INKATHA MIDLANDS LEADER, MR DAVID NTOMBELA, THE KZP, THE KWAZULU GOVERNMENT, THE RIOT UNIT OF THE SAP, INCLUDING SPECIAL CONSTABLES, AND THE SOUTH AFRICAN DEFENCE FORCE. THE COMMISSION ALSO MADE A FINDING IN RESPECT OF THE PROVOCATIVE ROLE OF MEMBERS OF THE UDF IN THE CONFLICT.

Reference 515 - 0.01% Coverage

THE COMMISSION MADE A COMPREHENSIVE FINDING IN RESPECT OF THE ESIKHAWINI HIT SQUAD IN THE FINDINGS CHAPTER. ACCOUNTABILITY FOR GROSS VIOLATIONS OF HUMAN RIGHTS IS APPORTIONED TO THE FOLLOWING PEOPLE: PRINCE GIDEON ZULU, MR M R MZIMELA, MAJOR M L

LANGENI, MR ROBERT MKHIZE, MS LINDIWE MBUYAZI, CHIEF K MATHABA, MR BB BIYELA AND BRIGADIER C P MZIMELA.

Reference 516 - 0.01% Coverage

237 The vast majority of reported cases of the alleged involvement of members of the KZP in gross violations of human rights occurred in the period 1990 to 1994. The victims were almost exclusively people perceived to be sympathetic towards the ANC. The exception was a handful of KZP members who were killed by their own colleagues after they refused to cover up Inkatha or KZP criminal activity. Mention was made above of the KZP's role in the Seven Day War, in hit squad activities and in training the 'Black Cats'. In addition, KZP members were regularly seen transporting Inkatha perpetrators to the scene of attacks. They collaborated with IFP vigilante groups in intimidating and attacking non-IFP supporters. They refused to investigate cases of political violence reported by UDF/ANC supporters. They disrupted UDF/ANC rallies. They frequently failed to respond to calls from UDF/ANC supporters under attack. They openly participated in attacks on UDF/ANC supporters, including murder, shootings, assault, abduction, arson attacks, harassment and torture. The KZP were also deeply involved in providing paramilitary assistance to the IFP (see below).

238 A number of KZP stations gained certain notoriety for severe misconduct and partisan policing. These included Umlazi, KwaMashu, KwaMakhutha, Madadeni, Sundumbili and Esikhawini. THE COMMISSION FINDS THAT THE KZP WERE OVERWHELMINGLY BIASED IN FAVOUR OF THE IFP AND THAT THEY ARE ACCOUNTABLE FOR GROSS VIOLATIONS OF HUMAN RIGHTS INCLUDING KILLING, ATTEMPTED KILLING, ABDUCTION, TORTURE AND ARSON.

Reference 517 - 0.01% Coverage

239 In the run-up to the 1994 elections, Inkatha came into conflict with the central government and the Transitional Executive Council (TEC) concerning the issue of independence and sovereignty for KwaZulu. Inkatha adopted a publicly declared militant stance towards the rejection of its demands, culminating in a decision not to participate in the April 1994 elections. It was only on 19 April 1994, just six days before the elections, that Inkatha did an about-turn and announced that it would contest the elections. In the interim period, KwaZulu and Natal experienced the worst wave of political violence in the region's history. Approximately 3 000 gross violations of human rights were perpetrated by Inkatha in KwaZulu and Natal from July 1993 to May 1994. This constituted more than 55 per cent of all violations reported to the Commission's Durban office for this period.

Reference 518 - 0.01% Coverage

261 The comparatively short period of the constitutional transformation in South African society during the 1990s was marked by a radical mobilisation of white right-wing groupings. In a number of instances, unlawful acts perpetrated by members of right-wing organisations resulted in gross violations of human rights.

Reference 519 - 0.01% Coverage

265 Between this date and the formation of the Afrikaner Volksfront (AVF) in 1993, the mood swung further towards violence. However, the right wing remained fragmented and most human rights violations during this time were perpetrated by extremist groups and individuals, some linked to the neo-Nazi churches.

Reference 520 - 0.01% Coverage

291 Similarly, there are indications that a leading right-wing operative who applied for amnesty for gross violations of human rights was in fact a source of one of the intelligence agencies. Claims in amnesty applications that SADF arsenals were shown to the right wing and that co-operation was promised could not be substantiated. Individual defence force members may, however, have helped to create caches and obtain weapons through established networks.

Reference 521 - 0.01% Coverage

Human Rights Violations since 2 February 1990

Reference 522 - 0.01% Coverage

309 From 1990 onwards, human rights violations perpetrated by supporters of rightwing organisations included targeted killings, indiscriminate attacks on individuals, the bombing of strategic targets/sabotage and violations associated with the Bophuthatswana invasion

Reference 523 - 0.01% Coverage

321 Grobbelaar's mother made a statement [JB0121/03WR] to the Commission alleging that the Security Branch might have been involved in the shooting that led to his death and pointing to irregularities in the police investigation. She alleged that she and her husband had been subject to intimidation and threats by the Security Branch both before and after his death. The Human Rights Violations Committee concluded that the two were shot and killed during a battle with the police, but that there was not sufficient evidence to disprove the inquest finding of suicide.

Reference 524 - 0.01% Coverage

375 The AWB members did not succeed in their aims and is generally seen to have signalled the end of the potential threat of the right-wing to engage in open warfare. Subsequent to the incident, right-wing unity under the Volksfront crumbled, Viljoen formed the Freedom Front and took significant sections of the right-wing into the electoral process. THE COMMISSION FINDS THAT THE AFRIKANER VOLKSFRONT WAS RESPONSIBLE FOR THE COMMISSION OF GROSS VIOLATION OF HUMAN RIGHTS AGAINST PERSONS WHO BETWEEN APRIL 1993-MAY 1994 WERE PERCEIVED TO BE SUPPORTERS AND LEADERS OF THE ANC, THE SACP, UDF, PAC AND NATIONAL PARTY AS WELL AS OTHER GROUPS PERCEIVED NOT TO SUPPORT THE CONCEPT OF AFRIKANER SELF-DETERMINATION OR THE ESTABLISHMENT OF A 'VOLKSTAAT' AND THAT, TO THAT END, THE MOVEMENT'S POLITICAL LEADERS AND MILITARY GENERALS ADVOCATED THE USE OF VIOLENCE IN PURSUIT OF THE MOVEMENT'S AIMS AND/OR IN AN ATTEMPT TO MOBILISE FOR AN INSURRECTION.

Reference 525 - 0.01% Coverage

- BY VIRTUE OF THEIR LEADERSHIP POSITIONS IN THE MOVEMENT, THE COMMISSION FINDS THE FOLLOWING TO BE ACCOUNTABLE FOR THE GROSS VIOLATION OF HUMAN RIGHTS COMMITTED BY SUPPORTERS OF THE MOVEMENT: GENERAL CONSTAND VILJOEN, GENERAL PIETER GROENEWALD AND MR EUGENE TERRE'BLANCHE.

Reference 526 - 0.01% Coverage

381 Part of Vula's task was to bring large quantities of weapons into South Africa, and to conceal them in 'dead letter boxes' so that they would be available if it became necessary. In the early 1990s, many such weapons were used by MK and SDU members in conflicts around the country. Indeed, the availability of weapons contributed significantly to the extent and nature of human rights violations in the 1990s.

Reference 527 - 0.01% Coverage

387 While it is not possible for the Commission to ascertain whether a 'Hani faction' linked to the SACP leadership was still intent on insurrection, Operation Vula was not linked to any specific human rights violations apart from those perpetrated by members of the security forces against Vula operatives.

Reference 528 - 0.01% Coverage

392 By 1992, the ANC had embarked on a strategy of 'rolling mass action'. The strategy was used, in part, to apply pressure on those who were resisting reunification. Although ostensibly a non-violent campaign, it did, on occasion, result in the commission human rights violations.

Reference 529 - 0.01% Coverage

431 Kweyama was a taxi driver in Mpusheni and was killed in Folweni on the South Coast. The Human Rights Commission (HRC) report for June 1992 notes that taxis were being targeted for attack and were used in attacks by both sides. Mhlongo was allegedly targeted as he was implicated in the murder of the accused's friend.

Reference 530 - 0.01% Coverage

459 Kasrils stated that strict instructions were sent out that the weapons were to be used for self-defence only. However, the fact that SDUs were armed and yet were not under any clear military discipline led to numerous situations in which human rights violations occurred. Two examples of this are the Katlehong SDUs on the East Rand (see Volume Three) and Khayelitsha SDUs in Cape Town (see above).

Reference 531 - 0.01% Coverage

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 WIDE SPREAD STATE-SPONSORED OR DIRECTED VIOLENCE AND A CLIMATE OF POLITICAL INTOLERANCE, SDU MEMBERS OFTEN 'TOOK THE LAW INTO THEIR OWN HANDS' AND COMMITTED GROSS VIOLATIONS OF HUMAN RIGHTS.

- THE COMMISSION TAKES NOTE THAT THE POLITICAL LEADERSHIP OF THE ANC AND THE COMMAND STRUCTURE OF MK HAVE ACCEPTED POLITICAL AND MORAL RESPONSIBILITY FOR ALL THE ACTIONS OF ITS MEMBERS IN THE PERIOD 1960-1994 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 IN THE MANDATE PERIOD.

Reference 532 - 0.01% Coverage

461 After the unbanning of the liberation movements on 2 February 1990, the PAC adopted a different strategic position to that of the ANC. While the ANC engaged almost immediately in 'talks about talks' with government representatives, the PAC told the Commission that it had held a principled approach to negotiations and believed that "one must negotiate from a position of strength". The PAC called for the formation of a patriotic front and for the establishment of an elected constituent assembly to draft a new constitution. They called for any meeting between the liberation movements and the regime to take place at a neutral venue under neutral chairpersons, so as to ensure a "level playing field". According to the PAC, the failure of CODESA to adhere to these principles led to the PAC's withdrawal. The PAC claims that: "Throughout this period the PAC adopted a positive outlook and urged the negotiating parties to be principled". It was, nevertheless, during this period of negotiations that the PAC's military wing APLA engaged in its most effective campaigns and was responsible for most of the human rights violations attributed to the organisation.

Reference 533 - 0.01% Coverage

THE COMMISSION FINDS THAT THE TARGETING OF CIVILIANS FOR KILLING WAS NOT ONLY A GROSS VIOLATION OF HUMAN RIGHTS OF THOSE AFFECTED BUT A VIOLATION OF INTERNAL HUMANITARIAN LAW. THE COMMISSION NOTES BUT REJECTS THE PAC'S EXPLANATION THAT ITS KILLING OF 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 GROSS VIOLATIONS OF HUMAN RIGHTS FOR WHICH THE PAC AND APLA LEADERSHIP ARE HELD TO BE MORALLY AND POLITICALLY RESPONSIBLE AND ACCOUNTABLE.

Reference 534 - 0.01% Coverage

THE COMMISSION FINDS THAT, WHILE THERE IS LITTLE EVIDENCE OF A CENTRALLY DIRECTED, COHERENT OR FORMALLY CONSTITUTED 'THIRD FORCE', A NETWORK OF SECURITY AND EXSECURITY FORCE OPERATIVES, ACTING FREQUENTLY IN CONJUNCTION WITH RIGHT-WING ELEMENTS AND/OR SECTORS OF THE IFP, WERE INVOLVED IN ACTIONS THAT COULD BE CONSTRUED AS FOMENTING VIOLENCE AND WHICH RESULTED IN GROSS VIOLATIONS OF HUMAN RIGHTS, INCLUDING RANDOM AND TARGETED KILLINGS.

Reference 535 - 0.01% Coverage

1 The regional profiles provide an overview of gross violations of human rights as they were reported to the Commission, in both chronological and thematic narrative. It was not possible to include every case brought to the Commission; rather the stories that illustrate particular events, trends and phenomena have been used as windows on the experiences of many people.

2 The primary sources for this report are the statements of individual deponents, as well as submissions by political parties, institutes and professional bodies. Reliance has also been placed on the transcripts of the hearings of the Commission – both human rights violations hearings and amnesty hearings – and on the transcripts of in camera hearings. Documentation from Commission enquiries, such as police dockets, court transcripts, inquest findings, post mortem reports and so on have also been used.

Reference 536 - 0.01% Coverage

8 Findings in the regional profiles focus mainly on events or issues that shaped the nature of gross human rights violations in each region. The regional profiles do not, on the whole, make findings on individual cases. Individual findings are to be found in the summary of statements given to the Commission. Because the findings on individual cases have a bearing on the applications for amnesty still pending, these will become available in full at an appropriate time during the continued work of the Amnesty Committee of the Commission. For the purposes of this report, a full list of the names of persons found by the Commission to be victims appears in Volume Five.

Reference 537 - 0.01% Coverage

11 The Human Rights Violations Committee gathered 21 296 statements during the course of its work. The Truth and Reconciliation Commission (the Commission) asked all South Africans who had suffered in the political conflicts of the past to come to the Commission and make a statement. In an attempt to reach all sectors of the community, especially those that were hostile to the Commission, it made special appeals through the media and through hearings to ensure that all voices were heard.

Reference 538 - 0.01% Coverage

of human rights

Reference 539 - 0.01% Coverage

1 Gross violations of human rights are: killings, torture, severe ill treatment and abduction. In addition, a number of violations were reported which did not fall into these categories. These were called 'associated violations' by the Commission.

Reference 540 - 0.01% Coverage

14 Note also that none of these figures includes information from the Amnesty Committee. The work of that committee is perpetrator-focused, and was far from complete at the time of reporting. This volume considers only the violations reported to the Human Rights Violations Committee.

15 After the details were captured, each statement was corroborated by the Investigative Unit and passed to the Human Rights Violations Committee, which made findings on the violations. The tables and analyses which follow are based on 37 942 violations reported by victims who were found by the Committee³ to have suffered a gross violation as defined in the Promotion of National Unity and Reconciliation Act. Of these violations, 33 713 are gross violations of human rights.

Reference 541 - 0.01% Coverage

Number of human rights violations reported, by type and area in which the violation occurred

2 See the appendix to the chapter on Methodology (in Volume One) which describes the information management system used by the Commission. 3 At the time of reporting, many cases had not been finalised by the Human Rights Violations Committee, either because deponents had been given an opportunity to provide more documentation, or because the cases are still under review. The complete list of findings will be finalised and published in a later volume. They have been included in this analysis for completeness.

Reference 542 - 0.01% Coverage

lations of human rights in the area covered by the Durban office, both absolutely and proportionally. As we shall see, the bulk of these violations occurred in the 1990–1994 period.

Reference 543 - 0.01% Coverage

22 To make sense of these patterns, it is necessary to look at what sort of violations fall into each category (what constitutes severe ill treatment, for example). Each of the categories of human rights violations was broken up into sub-headings⁵, so a clearer picture emerges from a more detailed look at the violations. These charts show the top eight sub-types of each human rights violation category, starting with killings⁶:

Reference 544 - 0.01% Coverage

5 See appendix 2 to Analysis of Human Rights Violations in Volume 5 for the coding frame, which provides a complete list of the definitions used. 6 In all charts of this type, only the top eight categories are shown, for brevity. 7 'Necklacing' refers to the practice of placing a car tyre around the neck of a victim and setting it alight.

Reference 545 - 0.01% Coverage

In the Boipatong killings on 17 June, two hundred IFP supporters from KwaMadala hostel attack residents of Slovo Park squatter camp, killing over forty-five people. The ANC withdraws from CODESA in protest against the killing and launches a mass action campaign. The ANC calls a strike on 3–4 August, estimated to have cost business R250 million. The Skweyiya Commission of Enquiry, an internal ANC commission, reveals details in August of human rights violations in ANC detention camps. Nelson Mandela accepts collective responsibility for the leadership of the ANC. In the Bisho killings on 7 September, Ciskei Defence Force troops open fire on ANC protesters demanding free political activity in Ciskei at Bisho. Twenty-nine protesters and one soldier are killed and about 200 are wounded. (This follows months of violent conflicts between homeland government supporters and ANC supporters). On the Natal South Coast, twelve IFP supporters are killed at Bomela in September and twenty at Folweni in October. The state and the ANC sign the Record of Understanding in September.

Reference 546 - 0.01% Coverage

A second ANC-appointed enquiry, the Motsuenyane Commission, reports in August on human rights abuses in ANC detention camps. Conclusions reached (similar to those of the first enquiry) are accepted by the ANC. Alleged perpetrators are named.

Reference 547 - 0.01% Coverage

Overview of violations 5 Abuses of human rights in this region included: a violations committed during the Pondoland Revolt of the 1960s;

Reference 548 - 0.01% Coverage

6 Human rights violations in the Eastern Cape during this period were related to the detention and trial of ANC and PAC members in the early 1960s. The Commission heard numerous allegations of torture and assault in custody. Deaths in custody were also recorded for this period.

Reference 549 - 0.01% Coverage

Percentage of human rights violations in the region, by period: 1960–1975.

Reference 550 - 0.01% Coverage

24 The Human Rights Commission (HRC) records the death of detainee, Mr Mthayeni Cuthsela, in Pondoland on 21 January 1971. Officially Cuthsela died in hospital of “natural causes, brain haemorrhage”⁴ after forty days’ detention. Kairos reports that Cuthsela was detained in December 1970 in connection with the Pietermaritzburg Terrorism Trial, and held at Mkambati camp and Umtata jail. At Mkambati, he was often handcuffed and tied to a tree. He was beaten, kicked and given electric shocks to the ears and penis over four days. Although he complained of severe headaches, he was denied access to a doctor at both Mkambati and Umtata. In January 1971, Cuthsela was taken while unconscious from the Umtata jail to the local hospital, where he died of a brain haemorrhage attributable to arteriosclerosis. The police retained the death certificate.⁵

Reference 551 - 0.01% Coverage

4 Human Rights Commission, Deaths in detention, August 1990. (This Human Rights Commission was later renamed the Human Rights Committee). 5 Kairos, Political prisoners and detainees in South Africa. Preliminary report, November 1996, pp 5–6; and Kairos, Torture in South Africa, Theunis Jacobus Swanepoel, February 1977, p 26. 6 Kairos (1997) p 26.

Reference 552 - 0.01% Coverage

9 Human Rights Commission, Deaths in detention. August 1990. VOLUME 3 CHAPTER 2 Regional Profile: Eastern Cape

Reference 553 - 0.01% Coverage

THE COMMISSION FINDS THAT DETAINEES, PARTICULARLY THOSE REGARDED AS MEMBERS OF THE ANC AND PAC AND THEIR ARMED WINGS, WERE SUBJECTED TO VARIOUS FORMS OF SEVERE ILL TREATMENT AND TORTURE BY THE SOUTH AFRICAN POLICE (SAP). THE COMMISSION BELIEVES THAT SUCH ILL TREATMENT AND TORTURE RESULTED IN DEATHS IN DETENTION – FOR EXAMPLE, THAT OF MR CALEB MAYEKISO IN PORT ELIZABETH IN 1969. THE COMMISSION FINDS THAT SUCH SEVERE ILL TREATMENT, TORTURE AND RESULTANT DEATHS IN DETENTION AMOUNT TO GROSS HUMAN RIGHTS VIOLATIONS FOR WHICH THE SAP IS HELD ACCOUNTABLE.

Reference 554 - 0.01% Coverage

THE COMMISSION FINDS THAT THE ACTIONS OF THE POLICE WERE PART OF A SYSTEMATIC CAMPAIGN TO SUPPRESS POLITICAL OPPOSITION TO THE POLICIES OF THE STATE AND THAT THESE ACTIONS BY THE SAP AMOUNT TO GROSS HUMAN RIGHTS VIOLATIONS FOR WHICH THE SAP IS HELD ACCOUNTABLE.

Reference 555 - 0.01% Coverage

CIVILIANS AND/OR POLICE WERE KILLED OR INJURED. THESE ACTIONS WERE CARRIED OUT AS PART OF THE PAC'S ARMED STRUGGLE. THE COMMISSION FINDS THAT THESE ACTIONS AMOUNT TO GROSS HUMAN RIGHTS VIOLATIONS FOR WHICH THE PAC IS HELD ACCOUNTABLE.

Reference 556 - 0.01% Coverage

71 The incidents that collectively became known as the Pondoland Revolt took place primarily in 1960-61 in the Pondoland region of former Transkei. The Commission received over 200 human rights violations statements in connection with the Pondoland Revolt, almost all of which were taken in the Bizana-Lusikisiki-Flagstaff regions, mostly from the Bizana area. No amnesty applications were received in connection with this matter. A public hearing was held at Lusikisiki in March 1997, generating enormous public interest. The gap of nearly four decades since the revolt meant that the Commission had difficulty collecting information and retrieving documentation. While some of the deponents had been personally involved in the revolt and could speak from their personal experiences, many stories were given to the Commission by descendants who lacked clear information on what had happened. Some deponents reported victims on both sides of the conflict.

Reference 557 - 0.01% Coverage

THE COMMISSION FINDS FURTHER THAT PARAMOUNT CHIEF KAISER DALIWONGA MATANZIMA ORDERED OR SANCTIONED SEVERAL VIOLATIONS OF HUMAN RIGHTS INCLUDING TORTURE OR PHYSICAL ASSAULTS ON PEOPLE. THE COMMISSION FINDS THAT THESE ACTIONS AMOUNTED TO GROSS HUMAN RIGHTS VIOLATIONS FOR WHICH SOME OF THE CHIEFS IN TRANSKEI REGION, INCLUDING PARAMOUNT CHIEF KD MATANZIMA ARE HELD RESPONSIBLE.

THE COMMISSION FINDS THAT A GROUP OF PEOPLE CALLING THEMSELVES 'IKONGO MEMBERS' WERE INVOLVED IN HUMAN RIGHTS VIOLATIONS WHEN THEY CARRIED OUT REVENGE ATTACKS ON PEOPLE WHO WERE ALLEGED TO BE SUPPORTERS OF THE BANTU AUTHORITIES, KILLING SOME AND BURNING DOWN THEIR PROPERTIES. THIS CONTRIBUTED TO A CULTURE OF POLITICAL INTOLERANCE IN THE EASTERN CAPE AND AMOUNTED TO GROSS HUMAN RIGHTS VIOLATIONS FOR WHICH IKONGO MEMBERS ARE HELD ACCOUNTABLE.

THE COMMISSION FINDS THAT THE SECURITY FORCES, IN THE FORM OF THE SAP ACTING WITH SUPPORT FROM THE SADF, SHOT AND KILLED ELEVEN PEOPLE AND INJURED AN UNKNOWN NUMBER OF OTHERS NEAR NGQUZA HILL ON 6 JUNE 1960. THE COMMISSION FURTHER FINDS THAT NO WARNING WAS GIVEN BEFORE THE SHOOTING STARTED AND THAT UNJUSTIFIABLE DEADLY FORCE WAS USED. THE COMMISSION FINDS THAT THE ACTIONS OF THE SECURITY FORCES AMOUNT TO GROSS HUMAN RIGHTS VIOLATIONS FOR WHICH THE SAP AND THE SADF ARE HELD ACCOUNTABLE.

Reference 558 - 0.01% Coverage

Percentage of human rights violations in the region by period: 1976-82

Reference 559 - 0.01% Coverage

THE COMMISSION FINDS THAT THE PERIOD 1976-1982 WAS CHARACTERISED BY AN INCREASE IN THE RELIANCE BY THE SAP ON ILLEGAL METHODS OF POLICING, THE UNJUSTIFIED USE OF DEADLY FORCE, AND THE ASSAULT AND TORTURE OF SUSPECTS AND DETAINEES, RESULTING IN THE DEATHS OF AND SEVERE INJURIES TO LARGE NUMBERS OF PEOPLE. THE COMMISSION FINDS THAT SUCH ACTS WERE GROSS HUMAN RIGHTS VIOLATIONS FOR WHICH THE SAP IS HELD ACCOUNTABLE. EVIDENCE BEFORE

THE COMMISSION INDICATES THAT MANY ACTIVISTS AND DETAINEES WERE DETAINED AND TORTURED AT THE POLICE SECURITY BRANCH HEADQUARTERS AT THE SANLAM BUILDING IN PORT ELIZABETH.

Reference 560 - 0.01% Coverage

THE COMMISSION FINDS THAT THE DEATH IN DETENTION OF MR STEPHEN BANTU BIKO ON 12 SEPTEMBER 1977 WAS A GROSS HUMAN RIGHTS VIOLATION. MAGISTRATE MARTHINUS PRINS FOUND THAT THE MEMBERS OF THE SAP WERE NOT IMPLICATED IN HIS DEATH. THE MAGISTRATE'S FINDING CONTRIBUTED TO THE CREATION OF A CULTURE OF IMPUNITY IN THE SAP.

Reference 561 - 0.01% Coverage

THE COMMISSION FINDS THAT THE ACTIONS OF THE SAP AND THE NAMED POLICE OFFICERS INVOLVED IN THE KILLING OF DETAINEES AT THE SANLAM BUILDING IN PORT ELIZABETH CONSTITUTE GROSS HUMAN RIGHTS VIOLATIONS FOR WHICH THE SAP AND THE NAMED POLICE OFFICERS ARE HELD RESPONSIBLE.

Reference 562 - 0.01% Coverage

THE COMMISSION FINDS THAT THE TRANSKEI HOMELAND AUTHORITY, THROUGH ITS PRESIDENT PARAMOUNT CHIEF KAISER DALIWONGA MATANZIMA, WAS RESPONSIBLE FOR ORDERING OR SANCTIONING VARIOUS ACTS WHICH AMOUNT TO GROSS VIOLATIONS OF HUMAN RIGHTS – INCLUDING THE DETENTION OF MR EZRA ZEERA MTSHONTSHI, THE DETENTION OF MR PHINDILE MFETI AND THE BANISHMENT AND DESTRUCTION OF PROPERTIES OF MR BANGILIZWE JOYI AND MR DALAGUBHE JOYI.

Reference 563 - 0.01% Coverage

THE COMMISSION FINDS THAT THE CISKEI HOMELAND AUTHORITY, THROUGH ITS PRESIDENT CHIEF LENNOX SEBE AND THE HEAD OF THE CISKEI SECURITY FORCES GENERAL CHARLES SEBE, WAS RESPONSIBLE FOR ORDERING OR SANCTIONING VARIOUS ACTS WHICH AMOUNT TO GROSS HUMAN RIGHTS VIOLATIONS — INCLUDING THE SEVERE HARASSMENT, DETENTION AND TORTURE OF THE LEADING MEMBERS OF SAAWU AND THE KILLING OF MS DELISWA ROXISO. THE COMMISSION FINDS THAT THE ACTIONS OF THE TRANSKEI AND CISKEI HOMELAND AUTHORITIES AMOUNTED TO GROSS HUMAN RIGHTS VIOLATIONS FOR WHICH PARAMOUNT CHIEF KAISER DALIWONGA MATANZIMA AND CHIEF LENNOX WONGAMA SEBE, IN THEIR CAPACITIES AS HEADS OF THESE AUTHORITIES, ARE HELD RESPONSIBLE.

Reference 564 - 0.01% Coverage

139 The Mthimkulu and Madaka cases were finally heard at a special hearing of the Commission's Human Rights Violation Committee on 26 June 1996 at the Centenary Hall, New Brighton. On the day before the hearing, a Cape Town Supreme Court ruling overturned the previous decisions and ensured that the evidence of Ms Mthimkulu could be heard. Various COSAS activists also gave evidence, handing in a list of COSAS activists who had died in this period and naming a number of Security Branch officers as torturers.

Reference 565 - 0.01% Coverage

THE COMMISSION FINDS THAT THE ACTIONS OF THE SAP AND THE NAMED POLICE OFFICERS AMOUNT TO GROSS HUMAN RIGHTS VIOLATIONS FOR WHICH THE SAP AND THE NAMED POLICE OFFICERS ARE HELD RESPONSIBLE.

Reference 566 - 0.01% Coverage

Percentage of human rights violations in the region, by period: 1983–89

Reference 567 - 0.01% Coverage

Number of gross human rights violations reported to the Commission in statements, by year and region in which the violations were committed

Reference 568 - 0.01% Coverage

21 See Fink Haysom, Ruling with the whip: Report on the violation of human rights in the Ciskei. Johannesburg: Centre for Applied Legal Studies (CALS), October 1983; Institute for Planning Research, An investigation into the Mdantsane/East London bus boycott. University of Port Elizabeth, April 1984 and contemporary newspaper accounts.

Reference 569 - 0.01% Coverage

ACTIONS IN ATTEMPTING TO BREAK THE BOYCOTT AND FORCE PEOPLE TO USE BUSES LED TO THE COMMISSION OF WIDESPREAD GROSS HUMAN RIGHTS VIOLATIONS, INCLUDING KILLING, ATTEMPTED KILLING, AND SEVERE ILL TREATMENT, FOR WHICH THE CISKEI POLICE AND CDF ARE HELD ACCOUNTABLE.

THE COMMISSION FINDS THAT PRO-CISKEI GOVERNMENT VIGILANTES ALSO PARTICIPATED IN THE UNLAWFUL ATTACKS ON COMMUNITIES, AND ARE HELD EQUALLY ACCOUNTABLE FOR THE GROSS VIOLATIONS OF HUMAN RIGHTS THAT RESULTED.

Reference 570 - 0.01% Coverage

179 There had previously been allegations that a baby had died in the shooting; the Kannemeyer Commission found that this was not true. One of the ambulance drivers told this Commission he had seen a dead baby at the scene, but nobody could corroborate this. This Commission also heard from a woman who said her baby had been ill with gastro-enteritis and she had arrived at the casualty department at the same time as many of those wounded in the massacre. Her baby had been certified dead on arrival at the hospital. It appears that this incident may have been confused with the massacre, and the Commission satisfied itself that this baby's death had no connection with the shooting. THE COMMISSION FINDS THAT, WHILE THE SAP WERE JUSTIFIED IN PREVENTING THE MARCH AND DISPERSING THE CROWD, THEY RESORTED TO GROSSLY EXCESSIVE MEANS TO ACHIEVE THIS, USING UNJUSTIFIED DEADLY FORCE, AND THAT THEY ARE ACCOUNTABLE FOR THE GROSS HUMAN RIGHTS VIOLATIONS (KILLINGS, ATTEMPTED KILLINGS AND SEVERE ILL TREATMENT) WHICH RESULTED FROM THEIR ACTIONS.

Reference 571 - 0.01% Coverage

183 On 11 August, large-scale violence was sparked off in Duncan Village after the funeral of human rights lawyer and activist Ms Victoria Mxenge, who had been assassinated in Durban. Her husband, human

rights lawyer and activist Mr Griffiths Mxenge, had been killed in Durban by a police hits quad some years earlier. She was buried next to her husband at her home village of Rayi outside King William's Town, about sixty kilometres from Duncan Village.

Reference 572 - 0.01% Coverage

THE COMMISSION FINDS THAT, WHILE THE POLICE WERE OBLIGED TO MAINTAIN ORDER DURING THE PERIOD OF UNREST IN DUNCAN VILLAGE, THEY ROUTINELY RESORTED TO THE UNJUSTIFIED USE OF DEADLY FORCE IN DOING SO AND ARE ACCOUNTABLE FOR THE GROSS VIOLATIONS OF HUMAN RIGHTS THAT RESULTED FROM THEIR ACTIONS, INCLUDING KILLING, ATTEMPTED KILLING AND SEVERE ILL TREATMENT.

Reference 573 - 0.01% Coverage

193 The Commission's public hearings in Aliwal North focused on human rights violations in Aliwal North and in surrounding districts such as Barkly East, Lady Grey, Sterkspruit, Jamestown and Burgersdorp.

Reference 574 - 0.01% Coverage

196 According to stories told to the Commission, police standing on top of a building fired on protesting youths. Chaos followed in the township with arson attacks and further clashes between youth and police. The shootings were followed by detentions, and in May 1986, twenty-three people were charged with public violence related to the August 1985 events. Inquests subsequently found nobody criminally liable for the deaths. The Commission was unable to find police records relating to these incidents as records from that period were reported to have been destroyed. THE COMMISSION FINDS THAT THE POLICE RESORTED TO THE UNJUSTIFIED USE OF DEADLY FORCE IN DEALING WITH THE AUGUST 1985 PUBLIC UNREST, AND ARE ACCOUNTABLE FOR THE GROSS HUMAN RIGHTS VIOLATIONS WHICH RESULTED FROM THEIR ACTIONS, INCLUDING KILLING, ATTEMPTED KILLING AND SEVERE ILL TREATMENT.

Reference 575 - 0.01% Coverage

later, the then Minister of Justice, Mr Kobie Coetzee, said that an inquest into nine deaths from that incident had found that nobody was criminally liable. IN REVIEWING THE EVIDENCE OF THE GROSS HUMAN RIGHTS VIOLATIONS REPORTED TO THE COMMISSION IN THIS PERIOD, THE COMMISSION FINDS THAT THE STATE AND THE HOMELAND AUTHORITIES IN THE EASTERN CAPE DISPLAYED TOTAL DISREGARD FOR THE LIVES OF THOSE ENGAGED IN PROTEST ACTION AGAINST THEIR POLICIES. WHERE LESSER MEASURES WOULD HAVE SUFFICED FOR THE RESTORATION OF PUBLIC ORDER, DEADLY FORCE WAS USED, RESULTING IN: • THE KILLING OF AT LEAST SIX PEOPLE AT RAILWAY STATIONS IN MDANTSANE ON 4 AUGUST 1983 BY THE CISKEI POLICE AND THE CDF DURING THE MDANTSANE BUS BOYCOTT;

Reference 576 - 0.01% Coverage

THE COMMISSION FINDS THAT THERE WERE THREE INCIDENTS IN THE EASTERN CAPE IN WHICH THE SAP ACTED AGAINST PUBLIC PROTESTS BY AMBUSHING AND SHOOTING PROTESTERS IN TROJAN HORSE-STYLE OPERATIONS — IN DESPATCH ON 18 APRIL 1985, AT KWANOBUHLE IN UITENHAGE ON 2 MAY 1985 AND AT VERGENOEG IN STEYNSBURG ON 27 DECEMBER 1985. IN REVIEWING THE EVIDENCE BEFORE THE COMMISSION, THE COMMISSION FINDS THAT THE ACTION OF THE POLICE IN THESE THREE

INCIDENTS WAS CONTRARY TO NORMAL PUBLIC ORDER POLICING PROCEDURES AND THAT THESE INCIDENTS WERE DELIBERATE ATTEMPTS BY MEMBERS OF THE SAP TO CREATE SITUATIONS IN WHICH PROTESTERS WOULD BE KILLED IN ORDER TO SUPPRESS SUCH PROTESTS. THE COMMISSION FINDS THAT THE ACTIONS OF THE SAP AMOUNT TO GROSS HUMAN RIGHTS VIOLATIONS FOR WHICH THE SAP IS HELD ACCOUNTABLE.

Reference 577 - 0.01% Coverage

THE COMMISSION FINDS THAT MAQINA IS ACCOUNTABLE FOR THE GROSS HUMAN RIGHTS VIOLATIONS WHICH RESULTED FROM HIS ACTIVITIES (KILLING, ATTEMPTED KILLING, TORTURE, ARSON AND SEVERE ILL TREATMENT).

ON THE EVIDENCE BEFORE THE COMMISSION, VARIOUS ACTS OF KILLING, ABDUCTION AND DESTRUCTION OF PROPERTY TOOK PLACE ON BOTH SIDES OF THE CONFLICT AS A RESULT OF THE ACTIVITIES OF THESE GROUPS. THE COMMISSION FINDS THAT THE POLICY OF CONTRAMOBILISATION CAUSED VARIOUS VIOLATIONS OF HUMAN RIGHTS TO BE COMMITTED FOR WHICH THE STATE IS HELD ACCOUNTABLE.

Reference 578 - 0.01% Coverage

271 UDF supporter, Mr Norman Gilindoda Gxekwa [AM0148/96] was granted amnesty in connection with the 'necklace' killings in Uitenhage of Mr Thando Dladla in September 1987, Mr Monwabisi Reginald Fanayo in February 1988 and Mr Thozamile Michael Dondashe in March 1988. Gxekwa was convicted of murder in these three cases and was serving a lengthy prison sentence. THE COMMISSION FINDS THAT A NUMBER OF POLITICAL DISSIDENTS WERE KILLED THROUGH THE 'NECKLACE' METHOD THROUGHOUT THE EASTERN CAPE REGION. THE MOST GRUESOME OF THESE INCIDENTS IS THAT WHICH WAS REPORTED TO THE COMMISSION BY THE KINIKINI FAMILY, WHERE FIVE MEMBERS OF ONE FAMILY WERE KILLED ON 23 MARCH 1985 IN KWANOBUHLE, UITENHAGE, BY A GROUP OF YOUTH WHO CLAIMED ALLEGIANCE TO THE UDF, INCLUDING MR MOSES JANTJIES AND MR WELLINGTON MIELIES. THE COMMISSION FINDS THAT THESE KILLINGS AMOUNTED TO GROSS VIOLATIONS OF HUMAN RIGHTS FOR WHICH THE UDF AND THE PERSONS NAMED IN THIS FINDING ARE HELD RESPONSIBLE.

Reference 579 - 0.01% Coverage

303 In December 1987, the Prisoners' Welfare Programmes (Priwelpro), a human rights group in Umtata, published a report on security activity in the homeland in 1987 (up to 15 November). It claimed that 238 people had been detained (one had been in detention since 1985). A total of 738 people had been charged in fortyone political trials. In nineteen cases, charges had been dropped or the accused acquitted; there had been convictions in only ten cases. Of twenty-seven court applications, most of them seeking relief from detention or banishment and expulsion orders, twenty-four led to final orders or interim relief. The report said that there were thirty-two legal suits pending against the Minister of Police, claiming a total of R1.7 million; all but two of these dealt with unlawful detention or arrest and assault in detention. By May 1988, these claims had risen to a total of R2 million. Of 155 prisoners sentenced to death in the previous ten years, eighty-five had been executed and thirty-three were on death row. There were eleven political prisoners serving sentences at the end of 1987. In September 1988 Priwelpro was banned — the only organisation known to have been banned under the Transkei military government.

Reference 580 - 0.01% Coverage

THE COMMISSION FINDS THAT, DURING THE LATE 1980S, THE TRANSKEI HOMELAND POLICE FORCE EMBARKED ON A PROGRAMME OF KILLING POLITICAL ACTIVISTS. EVIDENCE BEFORE THE COMMISSION POINTS TO THE RESULTING DEATHS AND DISAPPEARANCES OF ACTIVISTS BEING PART OF A SYSTEMATIC PATTERN OF ABUSE WHICH ENTAILED DELIBERATE PLANNING BY MEMBERS OF THE TRANSKEI POLICE, FOR WHICH THE TRANSKEI POLICE AND THE TRANSKEI GOVERNMENT ARE HELD ACCOUNTABLE. THESE DEATHS AND DISAPPEARANCES WERE GROSS VIOLATIONS OF HUMAN RIGHTS.

Reference 581 - 0.01% Coverage

THE COMMISSION FINDS THAT THESE ACTIONS LED TO WIDESPREAD GROSS HUMAN RIGHTS VIOLATIONS (KILLINGS, ATTEMPTED KILLINGS, TORTURE, ARSON AND SEVERE ILL TREATMENT) FOR WHICH THE SAP, THE CISKEI POLICE AND THE CDF ARE HELD ACCOUNTABLE.

Reference 582 - 0.01% Coverage

Percentage of human rights violations in the region, by period: 1990–94

Reference 583 - 0.01% Coverage

THE COMMISSION FINDS THAT VIOLENT CONFLICT ERUPTED IN SEVERAL PARTS OF THE EASTERN CAPE DURING THE 1990S — BETWEEN THE ANC AND PAC IN FORT BEAUFORT AND STEYNSBURG AND BETWEEN THE ANC AND AMAAFRIKA IN UITENHAGE. THIS CONFLICT RESULTED IN KILLINGS AND INJURIES ON BOTH SIDES AND WAS FUELLED BY POLITICAL INTOLERANCE. THE COMMISSION FINDS THAT KILLINGS, ATTEMPTED KILLINGS AND INCIDENTS OF SEVERE ILL TREATMENT RELATED TO THIS CONFLICT WERE GROSS VIOLATIONS OF HUMAN RIGHTS, FOR WHICH THE ORGANISATIONS INVOLVED IN THE CONFLICT ARE HELD ACCOUNTABLE.

Reference 584 - 0.01% Coverage

eye injury and a gunshot wound in his leg. He was able to walk out of the building, although he was limping. The post mortem report states that Duli's death was "consistent with gunfire and explosive injuries to chest and abdomen". It also indicates that Duli suffered severe injuries including a fractured skull, fractured ribs, fractured vertebrae, injuries to the spinal cord and extensive internal injuries. Press reports at the time indicate that Duli was carried out of the building, rather than walking as suggested by Wana, and that he was seriously injured. Despite the injuries, it appears that he was taken to the military base rather than to the hospital. Shortly after the attack, Lawyers for Human Rights wrote in a report³⁴:

Reference 585 - 0.01% Coverage

34 Lawyers for Human Rights, 'Regional News: Transkei' in Rights, February 1991, Johannesburg. VOLUME 3 CHAPTER 2 Regional Profile: Eastern Cape

Reference 586 - 0.01% Coverage

THE COMMISSION FINDS THAT THE DEATHS OF THE ABOVE PERSONS WERE GROSS HUMAN RIGHTS VIOLATIONS FOR WHICH THE FORMER STATE, THE SADF, THE CISKEI HOMELAND AUTHORITY AND COLONEL CRAIG DULI ARE HELD ACCOUNTABLE.

Reference 587 - 0.01% Coverage

THE COMMISSION FINDS THAT KILLINGS, ATTEMPTED KILLINGS AND SEVERE ILL TREATMENT WHICH OCCURRED DURING THIS CONFLICT WERE GROSS VIOLATIONS OF HUMAN RIGHTS, FOR WHICH THE ANC, THE CISKEI GOVERNMENT AND THE ADM ARE HELD ACCOUNTABLE.

Reference 588 - 0.01% Coverage

367 Ms Nowinile Badi, her husband Ben Badi and their granddaughter Vuyokazi Badi [EC0725/96CCK] were all killed when unknown gunmen attacked their home in Msobomvu, near Alice on 15 October 1992, in search of MK member Eric Fumanekile Badi [EC0727/96CCK]. Mr Eric Badi described how the attackers knocked on the window and called him by a nickname that only a few close friends knew, and then started shooting with rifles and throwing grenades. Badi was injured but managed to escape. THE COMMISSION FINDS THAT THE ATTACKS UPON CISKEI POLICE AND DEFENCE FORCE MEMBERS PRIOR TO AND FOLLOWING THE BISHO MASSACRE IN SEPTEMBER 1990 WERE CARRIED OUT BY MEMBERS AND SUPPORTERS OF APLA AND THE ANC. THE ATTACKS RESULTED IN GROSS HUMAN RIGHTS VIOLATIONS (KILLING, ATTEMPTED KILLING, ARSON AND SEVERE ILL TREATMENT) FOR WHICH THE ANC AND APLA ARE HELD ACCOUNTABLE.

Reference 589 - 0.01% Coverage

THE COMMISSION FINDS THAT, ON 2 SEPTEMBER 1992 THE ANC ORGANISED A MARCH OF SUPPORTERS FROM KING WILLIAM'S TOWN ACROSS THE HOMELAND BORDER TO BISHO IN CISKEI, IN SUPPORT OF DEMANDS FOR FREE POLITICAL ACTIVITY IN THE CISKEI AND FOR THE REMOVAL OF THE THEN CISKEI MILITARY RULER, BRIGADIER OUPA GQOZO. AT THE CULMINATION OF THE MARCH, AS MARCHERS WERE NEARING THE AFORESAID STADIUM, A GROUP OF THEM INCLUDING MEMBERS OF THE MARCH LEADERSHIP (THE BREAKAWAY GROUP) ATTEMPTED TO PASS THROUGH A GAP IN A FENCE IN THE VICINITY OF THE STADIUM, IN ORDER TO GAIN ACCESS TO THE TOWN OF BISHO. THIS ACTION WAS TAKEN PURSUANT TO A DECISION BY THE ALLIANCE LEADERSHIP WHICH LED THE MARCH, BUT WAS IN CONTRAVENTION OF THE COURT ORDER. THEY RAN TOWARDS THE GAP IN THE FENCE, AND DID NOT MOVE IN AN ORDERLY, CONTROLLED MANNER. THE MARCHERS WERE FIRED ON BY CDF SOLDIERS, RESULTING IN THE DEATHS OF THIRTY PEOPLE AND INJURIES TO AN UNSPECIFIED NUMBER OF PEOPLE, SUCH DEATHS AND INJURIES BEING GROSS HUMAN RIGHTS VIOLATIONS.

Reference 590 - 0.01% Coverage

ACCORDINGLY, THE ALLIANCE LEADERSHIP WHO TOOK THE DECISION IS HELD PARTIALLY ACCOUNTABLE FOR THE GROSS HUMAN RIGHTS VIOLATIONS ARISING FROM THE UNLAWFUL ACTIONS OF THE CDF.

Reference 591 - 0.01% Coverage

THE CDF IS ACCOUNTABLE FOR THE GROSS HUMAN RIGHTS VIOLATIONS (KILLINGS, ATTEMPTED KILLINGS AND SEVERE ILL-TREATMENT) ARISING FROM THE INCIDENTS ON 7 SEPTEMBER 1992. THE INDIVIDUAL MEMBERS OF THE CDF HELD ACCOUNTABLE ARE GENERAL MARIUS OELSCHIG, MAJOR MVELELI MLEVI MBINA, COLONEL VAKELE ARCHIEBALD MKOSANA AND GENERAL DIRK VAN DER BANK.

Reference 592 - 0.01% Coverage

THE COMMISSION FINDS THAT MEMBERS OF APLA CARRIED OUT VARIOUS ARMED ATTACKS ON SOFT TARGETS INCLUDING POLICE AND WHITES DURING THE 1990S AS PART OF THAT ORGANISATION'S OPERATION GREAT STORM. VARIOUS KILLINGS AND INJURIES RESULTED FROM THESE ATTACKS, WHICH INCLUDED THE ATTACKS ON THE KING WILLIAM'S TOWN GOLF CLUB, THE HIGHGATE HOTEL AND A QUEENSTOWN SPUR RESTAURANT. THESE ATTACKS WERE CARRIED OUT AS PART OF APLA'S ARMED STRUGGLE. THE COMMISSION FINDS THAT THESE ACTS CONSTITUTED GROSS VIOLATIONS OF HUMAN RIGHTS, FOR WHICH THE PAC/APLA ARE HELD ACCOUNTABLE.

Reference 593 - 0.01% Coverage

10 Close to half of all statements reporting gross human rights abuses received were from the KwaZuluNatal region (figures for Free State included: see introduction to this volume). This makes the proportion of submissions relative to population almost four times higher for this province than for the rest of the country. It was noticeable that the KwaZulu-Natal submissions tended to have a lower number of violations per victim (1.4 compared to the national average of 1.8–2.0), reflecting the large number of 'single incident' violations, mostly political killings and arson attacks.

Reference 594 - 0.01% Coverage

Quantity of information received by office Gross human rights violations 3 122

Reference 595 - 0.01% Coverage

12 The trends in gross human rights violations in Natal over the Commission's mandate period show a marked increase in severe ill treatment from 1984, rising sharply between 1988 and 1990, and again from 1992 until the national elections of April 1994. A similar trend is indicated for politically motivated killings. Severe ill treatment accounted for the highest number of reported violations, followed by politically motivated killings. Together these two categories made up the overwhelming majority of violations. Moreover, over half of all violations reported nationally in these categories occurred in KwaZulu-Natal. Forms of severe ill treatment included arson, assault, stabbing, incarceration, shooting, burning and destruction of property. The most common form of severe ill treatment occurring in Natal was arson, rising significantly in the 1983–89 period and increasing dramatically in the 1990s. Incidents of shooting also rose dramatically during these two periods. Most of the politically motivated killings in the province were by shooting. Fatal stabbings also showed a steady increase.

Reference 596 - 0.01% Coverage

17 Inkatha was identified as a major perpetrator of gross human rights violations from 1983. Incidents of killings attributed to Inkatha rose dramatically in 1989–90, peaking again in 1993. Acts of severe ill treatment attributed to Inkatha and later to the IFP rose steadily from 1983 and dramatically between 1989 and 1994.

Reference 597 - 0.01% Coverage

22 The Commission received a total of 19 143 reports of alleged human rights violations in the province, of which one quarter referred to politically motivated killings. NGOs, research institutes and monitoring

bodies have estimated the actual number of politically motivated killings for the period to have been four times greater – between 18 000 and 20 000.

Reference 598 - 0.01% Coverage

24 The majority of reports of human rights violations in the region refer to the conflict between supporters of the IFP and the ANC-aligned supporters of the UDF. Fighting between the two parties developed into open conflict in the 1980s and climaxed in the pre-April 1994 election violence, often amounting to civil war.

Reference 599 - 0.01% Coverage

Percentage of human rights violations in the region: 1960-75

40 Torture and severe ill-treatment were the predominant form of gross human rights violations reported for this fifteen-year period: that is, torture 41%; severe ill treatment 38%; associated violations 11%; killings 7%; attempted killings 1%; abduction 1%.

Reference 600 - 0.01% Coverage

Joseph Mdluli, Mr Rowley Arenstein, Ms Dorothy Nyembe and Mr MD Naidoo of the SACP. Several people fled into exile to avoid long prison sentences. IN REVIEWING THE EVIDENCE OF GROSS HUMAN RIGHTS VIOLATIONS PERPETRATED BY THE STATE IN NATAL DURING THIS PERIOD, THE COMMISSION FINDS THAT THE SAP ASSAULTED AND TORTURED DETAINEES AND OPPONENTS OF THE GOVERNMENT, ESTABLISHING A PATTERN OF ABUSE THAT INCREASED IN INTENSITY THROUGH SUBSEQUENT PERIODS. THESE ACTS AMOUNTED TO GROSS HUMAN RIGHTS VIOLATIONS FOR WHICH THE SAP IS HELD ACCOUNTABLE.

Reference 601 - 0.01% Coverage

THE COMMISSION FINDS THAT MEMBERS AND SUPPORTERS OF THE ANC WERE RESPONSIBLE FOR THE GROSS HUMAN RIGHTS VIOLATIONS ARISING OUT OF THE SEVERE ILL TREATMENT AND KILLING OF SO-CALLED 'COLLABORATORS' – INDIVIDUALS PERCEIVED TO BE WORKING FOR THE SAP IN A WAY THAT WAS DETRIMENTAL TO THE RESISTANCE MOVEMENTS, AND THAT SUCH ACTS FORMED A PATTERN OF ABUSE FOR WHICH UNKNOWN MEMBERS AND SUPPORTERS OF THE ANC ARE HELD ACCOUNTABLE.

Reference 602 - 0.01% Coverage

70 Combatants were not the only victims, however. Human rights activists, academics and ideological leaders engaged in legitimate opposition to the state's policy of apartheid were also targeted for attack. Assassination became a way of silencing and removing those who could not be charged with criminal offences, even within the broad parameters of the security legislation at the time.

Reference 603 - 0.01% Coverage

Percentage of human rights violations in the region: 1976-82

Reference 604 - 0.01% Coverage

79 In reviewing evidence of gross human rights violations perpetrated by the state in Natal during this period (1976–82): THE COMMISSION FINDS THAT THE SAP MADE WIDESPREAD AND ROUTINE USE OF ASSAULT AND SEVERE TORTURE AS PART OF A SYSTEMATIC CAMPAIGN TO SILENCE AND SUPPRESS OPPONENTS OF THE SOUTH AFRICAN GOVERNMENT. THE TORTURE AND SEVERE ILL TREATMENT OF AN UNKNOWN NUMBER OF SUCH PERSONS CONSTITUTE GROSS HUMAN RIGHTS VIOLATIONS FOR WHICH THE SAP IS HELD ACCOUNTABLE.

Reference 605 - 0.01% Coverage

THE COMMISSION FINDS THAT THE SAP MADE ROUTINE USE OF ASSAULT AND SEVERE TORTURE AS PART OF A SYSTEMATIC CAMPAIGN TO SILENCE AND SUPPRESS OPPONENTS OF THE SOUTH AFRICAN GOVERNMENT. THE ACTS OF SEVERE ILL TREATMENT PERPETRATED BY MEMBERS OF THE SAP CONSTITUTE GROSS VIOLATIONS OF HUMAN RIGHTS. IN SOME INSTANCES, THESE UNLAWFUL ACTS RESULTED IN THE DEATHS OF DETAINEES. THE SAP IS HELD ACCOUNTABLE FOR THESE GROSS VIOLATIONS OF HUMAN RIGHTS.

Reference 606 - 0.01% Coverage

Percentage of human rights violations in the region: 1983-89

Reference 607 - 0.01% Coverage

108 Individuals affiliated to human rights organisations during this period told the Commission that they were subjected to constant harassment, intimidation, surveillance and detention by the security police. 109 For the most part, these organisations were based in the main urban centres of the province and functioned to promote social justice and democracy in all arenas of civil society. Diakonia in Durban and the Pietermaritzburg Agency for Christian Social Awareness (PACSA) in Pietermaritzburg worked to promote social awareness in the churches. The Black Sash and paralegal organisations such as the Legal Resources Centre (LRC) and Lawyers for Human Rights (LHR) offered basic legal advice and support to ordinary people. The End Conscription Campaign (ECC) monitored developments in military conscription and offered advice to conscripts. Some organisations were set up to offer careers advice to school leavers and to address the problems of inequity in the educational arena. Others were set up in response to crisis situations brought on by intensified police repression and the repeated imposition of rule by emergency. Among these were the Detainees' Parents' Support Committee and the Education Crisis Committee.

Reference 608 - 0.01% Coverage

THE COMMISSION FINDS THAT THE SAP MADE ROUTINE USE OF ASSAULT AND SEVERE TORTURE AS PART OF A SYSTEMATIC CAMPAIGN TO SILENCE AND SUPPRESS OPPONENTS OF THE SOUTH AFRICAN GOVERNMENT. THE ACTS OF SEVERE ILL TREATMENT PERPETRATED BY MEMBERS OF THE SAP CONSTITUTE GROSS VIOLATIONS OF HUMAN RIGHTS. IN SOME INSTANCES, THESE UNLAWFUL ACTS RESULTED IN THE DEATHS OF DETAINEES. THE SAP IS HELD ACCOUNTABLE FOR THE GROSS VIOLATIONS OF HUMAN RIGHTS RELATED TO THESE ACTS.

Reference 609 - 0.01% Coverage

WET IS HELD ACCOUNTABLE FOR THE PERPETRATION OF THE GROSS HUMAN RIGHTS VIOLATIONS ARISING FROM THESE UNLAWFUL ACTS.

Reference 610 - 0.01% Coverage

THE COMMISSION FINDS THAT MR DAVID NTOMBELA'S ACTIONS CONSTITUTE GROSS HUMAN RIGHTS VIOLATIONS: CONSPIRACY TO KILL, ATTEMPTED KILLING, KILLING AND ARSON. THE COMMISSION FINDS THAT, ON 3 DECEMBER 1988, SGT WILLEM DE WET TRANSPORTED A NUMBER OF SPECIAL CONSTABLES OF THE SAP TO TRUST FEED NEAR PIETERMARITZBURG, IN THE KNOWLEDGE THAT THESE SPECIAL CONSTABLES WOULD LATER THAT NIGHT UNDERTAKE AN UNLAWFUL ATTACK ON RESIDENTS OF TRUST FEED. DE WET FAILED TO TAKE STEPS TO PREVENT THE ATTACK FROM TAKING PLACE AND FAILED TO BRING THIS UNLAWFUL INCIDENT TO THE NOTICE OF THE APPROPRIATE AUTHORITIES. THE COMMISSION FINDS THAT DE WET IS AN ACCESSORY TO THE KILLING OF ELEVEN PEOPLE AT TRUST FEED ON THE NIGHT OF 3 DECEMBER 1988 AND THAT HIS ACTIONS CONSTITUTE A GROSS VIOLATION OF HUMAN RIGHTS.

Reference 611 - 0.01% Coverage

THE COMMISSION FINDS THAT THE ACTIONS OF THE THREE OFFICERS WHO WERE APPOINTED TO ASSIST POLICE OFFICER FRANK DUTTON IN THE INVESTIGATION, NAMELY GENERAL RONNIE VAN DER WESTHUIZEN, CAPTAIN KRITZINGER AND COLONEL LANGENHOVEN, CONSTITUTED GROSS HUMAN RIGHTS VIOLATIONS IN THAT THEY ATTEMPTED TO DEFEAT THE ENDS OF JUSTICE BY DELIBERATELY HAMPERING AND ATTEMPTING TO COVER UP THE INVESTIGATIONS INTO THE

Reference 612 - 0.01% Coverage

THE COMMISSION FINDS THAT GENERAL MARX, THEN HEAD OF THE CID SERVICES IN NATAL, DEFEATED THE ENDS OF JUSTICE BY ADVISING MITCHELL, WHEN HE ADMITTED COMPLICITY IN THE TRUST FEED KILLINGS, THAT THE INCIDENT WOULD BE COVERED UP. MARX'S ACTIONS AMOUNT TO GROSS HUMAN RIGHTS VIOLATIONS FOR WHICH HE IS HELD ACCOUNTABLE.

Reference 613 - 0.01% Coverage

IN REVIEWING EVIDENCE OF GROSS HUMAN RIGHTS VIOLATIONS PERPETRATED BY THE STATE IN NATAL AND KWAZULU DURING THIS PERIOD, THE COMMISSION FINDS THAT THE SECURITY BRANCH OF THE SAP ENGAGED IN UNLAWFUL COVERT ACTS RESULTING IN THE DISAPPEARANCE AND TORTURE, AND IN MANY SUCH CASES, THE DEATHS OF POLITICAL ACTIVISTS OPPOSED TO THE SOUTH AFRICAN GOVERNMENT. THE COMMISSION FINDS THAT IN SOME CASES POLITICAL ACTIVISTS WERE DELIBERATELY KILLED BY MEMBERS OF THE SAP. THE SAP IS HELD ACCOUNTABLE FOR THE GROSS VIOLATIONS OF HUMAN RIGHTS REFLECTED BY THESE ACTS.

Reference 614 - 0.01% Coverage

138 Vigilante activities appeared to have the support, both covert and overt, of the security forces. A review of the evidence, based on affidavits submitted to the Commission by amnesty applicants Mr Shabangu, Mr Harrington and Mr Madlala, enabled the Commission to confirm the findings of the Human Rights Commission, that the security forces colluded with Inkatha vigilantes in the following ways:

Reference 615 - 0.01% Coverage

27 Human Rights Commission, 1992 'Checkmate for apartheid? Special report on two years of destabilisation July 1990 to June 1992'. SR-12, Johannesburg: HRC, p. 23.

Reference 616 - 0.01% Coverage

141 In Chesterville, JORAC members and supporters were targeted for attack by an Inkatha-supporting and state-sponsored vigilante group set up in the township in 1983/4, also known as the 'A-Team'. The group was based in Road 13. Statements made to the Commission alleging human rights abuses by the A-Team refer to incidents between 1985 and 1989. These included at least ten killings, several cases of attempted murder and severe ill treatment and arson attacks.

Reference 617 - 0.01% Coverage

145 Bennetts alleged that the A-Team was started by a military intelligence agent employed by the Natal Provincial Administration as the township manager to oversee the administration of Chesterville. He denied that the Riot Unit paid them or provided them with weapons. However, he had good reason to believe that either the military or the security police provided them with monetary and logistic assistance (firearms, petrol bombs and ammunition). He said further that "in all likelihood" some of the atrocities committed by the A-Team were planned by some unit of the security forces. THE COMMISSION FINDS THAT, AT THE BEHEST OF SEVERAL UNNAMED INKATHA-SUPPORTING TOWN COUNCILLORS AND UNNAMED MEMBERS OF THE SAP, VIGILANTE GROUPS WERE ESTABLISHED AND BECAME ACTIVE IN SEVERAL TOWNSHIPS IN THE PROVINCE FROM 1983. THE COMMISSION FINDS THAT THE A-TEAM, ACTIVE IN LAMONTVILLE AND CHESTERVILLE DURING 1983-4, WAS RESPONSIBLE FOR UP TO TEN KILLINGS AND AN UNKNOWN NUMBER OF ACTS OF ATTEMPTED KILLING, SEVERE ILL TREATMENT AND ARSON, TARGETING MAINLY UDF SUPPORTERS AND CONSTITUTING GROSS VIOLATIONS OF HUMAN RIGHTS, FOR WHICH UNKNOWN MEMBERS OF THE A-TEAM ARE HELD ACCOUNTABLE. MEMBERS OF THE SAP UNLAWFULLY SUPPORTED THE ACTIVITIES OF SUCH GROUPS AND ARE HELD ACCOUNTABLE FOR THE VIOLATIONS ARISING FROM THE ACTIVITIES OF THE A-TEAM.

Reference 618 - 0.01% Coverage

156 According to the LRC and the Human Rights Commission²⁹, the AmaSinyora were implicated in 291 attacks in 1989-90, including approximately 100 killings. During the same period, approximately 400 homes in K Section were abandoned.

Reference 619 - 0.01% Coverage

28 Legal Resources Centre (Durban) & Human Rights Commission (Durban), Obstacle to Peace: The Role of the KZP in the Natal Conflict. Joint Report. June 1992, p. 137. 29 Legal Resources Centre (1992) p 136.

Reference 620 - 0.01% Coverage

161 Gwala gathered around himself a group of 'strongmen' who intimidated and threatened people who clashed with him within the ANC and SACP. On occasion, he ordered assassinations, though they were not always carried out³¹. He had the charisma associated with warlords and his confrontational leadership style resonated with ANC supporters in the Natal Midlands who had borne the brunt of Inkatha and police attacks for years. THE COMMISSION FINDS THAT MR HARRY GWALA, NOW DECEASED, FUNCTIONED AS A SELFSTYLED ANC WARLORD IN THE GREATER PIETERMARITZBURG AREA, AND THAT HE ESTABLISHED

SELF-DEFENCE UNITS IN THE AREA UNDER HIS CONTROL. GWALA'S POLICIES AND PUBLIC UTTERANCES ACTIVELY FACILITATED A CLIMATE IN WHICH GROSS HUMAN RIGHTS VIOLATIONS

Reference 621 - 0.01% Coverage

COULD TAKE PLACE. THE COMMISSION FINDS THAT IN CALLING FOR THE KILLING OF PERSONS OPPOSED TO THE ANC, GWALA INCITED HIS SUPPORTERS TO COMMIT GROSS VIOLATIONS OF HUMAN RIGHTS, INCLUDING KILLING, ATTEMPTED KILLING, SEVERE ILL-TREATMENT AND ARSON, FOR WHICH HE IS HELD ACCOUNTABLE. THE ANC CONSISTENTLY FAILED TO REPROACH, DISCIPLINE OR EXPEL GWALA FROM ITS RANKS, AND THEREBY ENCOURAGED A CLIMATE OF IMPUNITY WITHIN WHICH GWALA CONTINUED TO OPERATE. TO THIS EXTENT, THE ANC IS ALSO HELD ACCOUNTABLE FOR THE PREVIOUSLY MENTIONED VIOLATIONS.

Reference 622 - 0.01% Coverage

169 Shabalala had a presence of armed men in many different parts of the region and was believed to have been involved in conflict in North Coast areas including Eshowe, Mandini, Esikhawini and Ngwelezana. By the end of the 1980s, he controlled a large area around the informal settlement of Lindelani. He continued to exact fees from residents³² and it is alleged that some of the proceeds went into his personal business ventures. In spite of the accumulation of evidence against him, Shabalala has remained seemingly immune to police action. THE COMMISSION FINDS THAT THOMAS MANDLA SHABALALA IS ACCOUNTABLE FOR GROSS HUMAN RIGHTS VIOLATIONS OVER AN EXTENDED PERIOD IN LINDELANI AND ELSEWHERE IN KWAZULU-NATAL. HE FOSTERED AND FACILITATED A CLIMATE IN WHICH OTHERS UNDER HIS LEADERSHIP COMMITTED GROSS HUMAN RIGHTS VIOLATIONS.

Reference 623 - 0.01% Coverage

174 In 1985, vigilante groups clustered around Imbali town councillors were reported to be going from house to house demanding that all UDF, AZAPO and Imbali Civic Association members be handed over to them. A number of attacks, assaults and acts of intimidation took place. Awetha was one of three people arrested on 9 June 1992 in connection with the death of Mr S'khumbuzo Ngwenya, who chaired the Imbali ANC branch (see below). However, charges were dropped when the state's key witness refused to testify after allegedly being threatened. Awetha has not been prosecuted for the violence in which he is alleged to have been involved or for his corrupt behaviour as a town councillor. THE COMMISSION FINDS THAT ABDUL AWETHA COMMITTED GROSS VIOLATIONS OF HUMAN RIGHTS IN THE NATAL MIDLANDS REGION FOR WHICH HE IS ACCOUNTABLE .

Reference 624 - 0.01% Coverage

CONSEQUENTLY, THE COMMISSION FINDS THAT THE GROSS VIOLATIONS OF HUMAN RIGHTS COMMITTED IN CONSEQUENCE OF OPERATION MARION WERE PART OF A SYSTEMATIC PATTERN OF ABUSE THAT ENTAILED DELIBERATE PLANNING ON THE PART OF THE FORMER STATE, THE KWAZULU GOVERNMENT AND THE INKATHA POLITICAL ORGANISATION. THE BASIS FOR ACCOUNT-

Reference 625 - 0.01% Coverage

191 In 1991, Jamile and Hlophe appeared in court facing fifteen charges, including five counts of murder, seven of attempted murder, and three of incitement to murder. In the indictment, Jamile was accused of

being involved between 1987 and 1989 in the killing of UDF-associated persons opposed to the incorporation of Clermont into KwaZulu. Two 'Caprivi trainees' who were implicated during the trial, Zweli Dlamini and Vela Mchunu, were hidden by the KZP until it was over. Owing to the inability of the police to trace these two suspects and other witnesses, Jamile was convicted on only two counts: one of murder and one of attempted murder. Hlophe was convicted on two counts of murder. Jamile was sentenced to life imprisonment but was released in terms of the Indemnity Act of 1992. He had served just one year of his sentence. Hlophe was granted amnesty by the Commission in 1996. THE COMMISSION FINDS SAMUEL JAMILE ACCOUNTABLE FOR THE GROSS VIOLATIONS OF HUMAN RIGHTS OF CAPRIVI TRAINEES IN CLERMONT TOWNSHIP.

Reference 626 - 0.01% Coverage

THE COMMISSION FINDS THAT UNKNOWN INKATHA SUPPORTERS ATTACKED MOURNERS ATTENDING A MEMORIAL SERVICE FOR SLAIN UDF MEMBER, MS VICTORIA MXENGE, AT THE UMLAZI CINEMA ON 8 AUGUST 1985, RESULTING IN THE DEATHS OF SEVENTEEN PEOPLE AND THE INJURY OF TWENTY OTHERS. THE DEATHS AND INJURIES ARISING FROM THIS ATTACK CONSTITUTE GROSS VIOLATIONS OF HUMAN RIGHTS FOR WHICH UNKNOWN SUPPORTERS OF INKATHA ARE HELD RESPONSIBLE. WHILE WITNESSES NAMED AT LEAST TWO PROMINENT INKATHA LEADERS WHOM THEY ALLEGED TO HAVE LED THE ATTACK ON THE UMLAZI CINEMA, THE COMMISSION IS UNABLE TO MAKE A FINDING AGAINST THESE LEADERS. THE ORGANISATION (INKATHA) DID NOT SANCTION OR REBUKE THOSE INVOLVED AND DID NOT DISSOCIATE ITSELF FROM THE VIOLENCE.

Reference 627 - 0.01% Coverage

because of the kind of person Gandhi was. The lamp was returned. Steele was able to rescue most of the books from the library and a few other items of no apparent use to the looters. Following the ransacking of the settlement, however, most of the buildings were reduced to smouldering ruins. THE COMMISSION FINDS THAT THE SETTLEMENT ESTABLISHED BY MAHATMA GANDHI AT PHOENIX, OUTSIDE DURBAN (INCLUDING A LIBRARY, A MUSEUM, A HOMESTEAD AND OTHER BUILDINGS) WAS DESTROYED IN AN ARSON ATTACK BY UNKNOWN SUPPORTERS OF THE INKATHA MOVEMENT IN AUGUST 1985. IN THE SAME INCIDENT, FORTY-SEVEN SHOPS OWNED BY INDIAN TRADERS WERE BURNT DOWN AND 500 INDIAN FAMILIES WERE FORCED TO FLEE THE AREA. THE MULTIPLE ACTS OF ARSON AMOUNT TO GROSS VIOLATIONS OF HUMAN RIGHTS FOR WHICH UNKNOWN SUPPORTERS OF THE INKATHA MOVEMENT ARE HELD RESPONSIBLE.

Reference 628 - 0.01% Coverage

THE COMMISSION FINDS THAT ELEVEN MINERS WERE KILLED AND 115 OTHERS INJURED BY UNKNOWN INKATHA SUPPORTERS IN CLASHES BETWEEN NUM AND UWUSA MEMBERS AT THE HLOBANE COLLIERY, NEAR VRYHEID, ON 6 JUNE 1986, CONSTITUTING GROSS VIOLATIONS OF HUMAN RIGHTS, FOR WHICH UNKNOWN SUPPORTERS OF THE INKATHA MOVEMENT ARE HELD ACCOUNTABLE.

Reference 629 - 0.01% Coverage

THE COMMISSION FINDS THE KILLING OF PROMINENT TRADE UNIONISTS IN MPHOPHOMENI TOWNSHIP BY MEMBERS OF INKATHA AND THE KZP SET IN MOTION A LENGTHY PERIOD OF POLITICAL CONFLICT RESULTING IN WIDESPREAD GROSS HUMAN RIGHTS VIOLATIONS FOR WHICH INKATHA AND THE KZP ARE HELD ACCOUNTABLE.

Reference 630 - 0.01% Coverage

SPECIAL CONSTABLE TRAINEES, ON THEIR DEPLOYMENT IN NATAL, TO ATTACK AND KILL MEMBERS OF THE UDF. THE COMMISSION FINDS THAT, AS A RESULT OF SUCH TRAINING AND INCITEMENT, THE TRAINEES DID IN FACT ENGAGE IN UNLAWFUL ACTS INCLUDING KILLING. SUCH ACTS CONSTITUTE GROSS VIOLATIONS OF HUMAN RIGHTS, FOR WHICH WARBER IS HELD ACCOUNTABLE.

Reference 631 - 0.01% Coverage

Percentage of human rights violations in the region: 1990-94

Reference 632 - 0.01% Coverage

46 Legal Resources Centre (Durban) and Human Rights Commission (Durban), Obstacle to Peace: The Role of the KZP in the Natal Conflict. Joint report. June 1992, p. 209.

Reference 633 - 0.01% Coverage

the perpetrator of at least twelve gross human rights violations, including nine killings. All the incidents occurred in the period 1990–92.

Reference 634 - 0.01% Coverage

258 From statements made to the Commission, KZP Constable Khethani Shange was found to be the perpetrator of at least six gross human rights violations, including two killings. All are related to incidents that occurred during 1990.

Reference 635 - 0.01% Coverage

259 The Commission has made a comprehensive finding regarding the KZP, in which it is described, inter alia, as a highly politicised force, openly assisting the IFP – by omission and by active participation – in the commission of gross human rights violations, as well as being grossly incompetent. THE COMMISSION FINDS THAT THE KZP, FROM THE PERIOD 1986 TO 1994, ACTED IN A BIASED AND IMPARTIAL MANNER AND ACTED OVERWHELMINGLY IN FURTHERANCE OF THE INTERESTS OF INKATHA, AND LATER THE IFP, IN THE MANNER SET OUT BELOW. THE KZP DISPLAYED BLATANT BIAS AND PARTIALITY TOWARDS IFP MEMBERS AND SUPPORTERS, BOTH THROUGH ACTS OF COMMISSION, WHERE THEY WORKED OPENLY WITH INKATHA, AND THROUGH ACTS OF OMISSION, WHERE THEY FAILED TO PROTECT OR SERVE NON-IFP SUPPORTERS. THE KZP WAS RESPONSIBLE FOR LARGE NUMBERS OF POLITICALLY MOTIVATED GROSS HUMAN RIGHTS VIOLATIONS (KILLINGS, ATTEMPTED KILLINGS, INCITEMENT AND CONSPIRACY TO KILL, SEVERE ILL-TREATMENT, ABDUCTION TORTURE AND ARSON), THE VICTIMS OF WHICH WERE ALMOST EXCLUSIVELY NON-IFP MEMBERS.

Reference 636 - 0.01% Coverage

AS SET OUT ABOVE, THE KZP IS ACCOUNTABLE FOR THE MANY POLITICALLY MOTIVATED GROSS VIOLATIONS OF HUMAN RIGHTS THAT WERE PERPETRATED BY ITS MEMBERS. THE KZP IS ALSO ACCOUNTABLE FOR THE MANY POLITICALLY MOTIVATED GROSS HUMAN RIGHTS VIOLATIONS

PERPETRATED BY MEMBERS OF THE IFP, AS A RESULT OF THE KZP'S FAILURE TO ACT AGAINST SUCH IFP MEMBERS, THEREBY CREATING A CLIMATE OF IMPUNITY WHICH FACILITATED THE COMMISSION OF SUCH GROSS HUMAN RIGHTS VIOLATIONS.

IN CONCLUSION, THE COMMISSION FINDS THAT, ALTHOUGH THERE WERE HONOURABLE EXCEPTIONS TO THE FOLLOWING GENERAL STATEMENT, IN THAT SOME MEMBERS OF THE KZP DID CARRY OUT THEIR DUTIES IN AN UNBIASED AND LAWFUL MANNER, THE KZP GENERALLY WAS CHARACTERISED BY INCOMPETENCE, BRUTALITY AND POLITICAL BIAS IN FAVOUR OF THE IFP, ALL OF WHICH CONTRIBUTED TO THE WIDESPREAD COMMISSION OF GROSS HUMAN RIGHTS DURING THE PERIOD REFERRED TO ABOVE.

Reference 637 - 0.01% Coverage

THE COMMISSION FINDS THAT FROM 25–31 MARCH 1990, THE COMMUNITIES IN THE LOWER VULINDLELA AND EDENDALE VALLEYS, SOUTH OF PIETERMARITZBURG, WERE SUBJECTED TO AN ARMED INVASION BY THOUSANDS OF UNKNOWN INKATHA SUPPORTERS, AND THAT DURING THIS WEEK OVER 200 RESIDENTS OF THESE AREAS WERE KILLED, HUNDREDS OF HOMES LOOTED AND BURNT DOWN AND AS MANY AS 20 000 PEOPLE WERE FORCED TO FLEE FROM THEIR HOMES. THESE ACTS CONSTITUTE GROSS HUMAN RIGHTS VIOLATIONS, AND UNKNOWN MEMBERS OF INKATHA ARE HELD ACCOUNTABLE.

Reference 638 - 0.01% Coverage

THE COMMISSION FINDS THAT THE SPECIAL CONSTABLES WERE DELIBERATELY ESTABLISHED AND TRAINED TO ASSIST INKATHA AGAINST THE LATTER'S POLITICAL ENEMIES AND THAT SPECIAL CONSTABLES, ACTING ALONE AND IN CONCERT WITH RIOT UNIT 8 OF THE SAP, REGULARLY COMMITTED SERIOUS UNLAWFUL ACTS IN ORDER TO SUPPORT AND ASSIST INKATHA, IN THE PERIOD PRIOR TO AND DURING THE SEVEN DAY WAR. SUCH ACTS INCLUDED THE KILLING OF FIFTEEN PEOPLE AT KWASHANGE, NAMELY MR MOSES ZUMA, MR ISRAEL ZUMA, MS ROSE MTOLO, MS AGNES SIBISI, MR MBUZANE NGUBANE, MR GEORGE ZONDI, MR KHABEKILE NGUBANE, MR NKANKABULA NGUBANE, MR ABEDNIGO MKHIZE, MR MZOMUHLE MANJWA, MR MFANAFUTHI NGUBANE, MR DOMINICA NCGOBO, MR MZIKAYIFANI MTOLO, MR MAKHOSONKE PHAKATHI AND MR MFULATHELWA MAKATHINI. THE SAP ARE HELD ACCOUNTABLE FOR THE GROSS HUMAN RIGHTS VIOLATIONS INVOLVED IN THESE KILLINGS BY UNKNOWN SPECIAL CONSTABLES DEPLOYED IN THE AREA.

THE COMMISSION FINDS THAT THE GROSS HUMAN RIGHTS VIOLATIONS INVOLVED IN THE EVENTS OF 28 MARCH 1990 TOOK PLACE ON THE INSTRUCTIONS OF MR DAVID NTOMBELA AND THAT NTOMBELA IS HELD ACCOUNTABLE FOR THESE, INCLUDING KILLING, ATTEMPTED KILLING, CONSPIRACY TO KILL, SEVERE ILL-TREATMENT AND ARSON.

THE COMMISSION FINDS IMPROBABLE THE EVIDENCE OF DIRECTOR DANIEL MEYER THAT THE POLICE ACTED IN AN IMPARTIAL AND UNBIASED MANNER AND DID EVERYTHING POSSIBLE TO PREVENT LOSS OF LIFE AND DAMAGE TO PROPERTY. ELEMENTS OF THE SAP RIOT UNIT 8, BOTH AT A SENIOR LEVEL AND AT THE LEVEL OF THE SPECIAL CONSTABLES ATTACHED TO THE UNIT, DELIBERATELY ACTED, BY OMISSION AND COMMISSION, TO ASSIST AND FACILITATE ATTACKS BY INKATHA SUPPORTERS ON NON-INKATHA RESIDENTS DURING THE SO-CALLED SEVEN DAY WAR. THEY FURTHERMORE DELIBERATELY FAILED TO DEPLOY THE SADF IN THE CONFLICT AREAS, IN ORDER TO GIVE FREE REIN TO INKATHA FORCES IN THEIR ATTACKS ON NON-INKATHA RESIDENTS. THE COMMISSION FINDS THAT THE ACTIONS OF THE RIOT UNIT CONSTITUTED GROSS HUMAN RIGHTS VIOLATIONS FOR WHICH THE SAP IS HELD RESPONSIBLE.

Reference 639 - 0.01% Coverage

THE COMMISSION FINDS THAT UNKNOWN OFFICIALS OF THE KWAZULU GOVERNMENT MADE AVAILABLE GOVERNMENT VEHICLES TO ASSIST INKATHA MEMBERS IN THEIR UNLAWFUL ATTACKS ON NON-INKATHA COMMUNITIES. IN THAT THE KZP KNOWINGLY PARTICIPATED IN AND THE KWAZULU GOVERNMENT OFFICIALS FACILITATED THE COMMISSION OF GROSS HUMAN RIGHTS VIOLATIONS, THE COMMISSION HOLDS THESE UNKNOWN MEMBERS OF THE KZP AND KWAZULU GOVERNMENT ACCOUNTABLE FOR SUCH VIOLATIONS.

Reference 640 - 0.01% Coverage

THE COMMISSION FINDS THAT A LARGE NUMBER OF COMMUNITY AND POLITICAL LEADERS, INCLUDING NON-ALIGNED ACADEMICS, PROFESSIONALS AND MEMBERS OF THE CLERGY, WERE TARGETED FOR ATTACK IN PLANNED HIT-SQUAD OPERATIONS IN THE PROVINCE FROM 1990–94. THE DEATHS ARISING FROM THESE ATTACKS CONSTITUTE GROSS VIOLATIONS OF HUMAN RIGHTS.

Reference 641 - 0.01% Coverage

THE COMMISSION FINDS THAT THE KILLING OF SIXTEEN PEOPLE ON 8 NOVEMBER 1990 WAS CAUSED BY UNKNOWN SUPPORTERS OF THE IFP FROM THE BRUNTVILLE HOSTEL, CONSTITUTING GROSS VIOLATIONS OF HUMAN RIGHTS, FOR WHICH UNKNOWN INKATHA-SUPPORTING HOSTELDWELLERS ARE HELD ACCOUNTABLE.

Reference 642 - 0.01% Coverage

THE COMMISSION FINDS THAT THE KILLINGS CONSTITUTE GROSS VIOLATIONS OF HUMAN RIGHTS, FOR WHICH UNKNOWN INKATHA-SUPPORTING HOSTEL-DWELLERS ARE HELD ACCOUNTABLE.

Reference 643 - 0.01% Coverage

348 The Commission received more than ten accounts of the incident. Fourteen people were killed and nine others injured in attacks on seven homesteads in Ndalení. THE COMMISSION FINDS THAT TWENTY-THREE PEOPLE, INCLUDING WOMEN AND CHILDREN, WERE KILLED BETWEEN 21 AND 23 JUNE 1991 IN THE RICHMOND AREA BY UNKNOWN SUPPORTERS OF THE IFP, CONSTITUTING GROSS VIOLATIONS OF HUMAN RIGHTS. TWO IFP MEMBERS, MR MDUDUZI PITSHANA GUMBI AND MR ROBERT 'VO' ZUMA [AM0433/96] WERE GRANTED AMNESTY FOR THEIR ROLES IN THE ATTACK ON 23 JUNE 1991.

Reference 644 - 0.01% Coverage

353 On 26 March 1992, nine IFP supporters were killed, several others injured and many homes burnt down in an attack on the Gengeshe community. Two ANC supporters, Mr Mandlenkosi Tommy Phoswa [AM3641/96] and Mr Mafuka Anthony Nzimande [AM3095/96], were granted amnesty in respect of the attack. Both were serving fourteen year prison terms for the attack. THE COMMISSION FINDS THAT NINE SUPPORTERS OF THE IFP WERE KILLED ON 26 MARCH 1992 BY SUPPORTERS OF THE ANC, CONSTITUTING GROSS VIOLATIONS OF HUMAN RIGHTS. ANC SUPPORTERS MANDLENKOSI TOMMY PHOSWA AND MAFUKA ANTHONY NZIMANDE WERE GRANTED AMNESTY IN RESPECT OF THEIR ROLES IN THE ATTACK.

Reference 645 - 0.01% Coverage

359 The daughter who was killed, Ms Thandekile Goodness Dlamini, was seven months pregnant at the time [KZN/KM/543/PS]. There have been no prosecutions in connection with the massacre. THE COMMISSION FINDS THAT TWELVE IFP SUPPORTERS WERE KILLED ON 4 SEPTEMBER AT BOMELA WHEN A GROUP OF UNKNOWN ARMED MEN STORMED A GATHERING OF THE IFP YOUTH BRIGADE. THE KILLINGS AMOUNT TO GROSS VIOLATIONS OF HUMAN RIGHTS. ON THE AVAILABLE EVIDENCE THE COMMISSION IS UNABLE TO MAKE A CONCLUSIVE FINDING ON THIS MASSACRE, SAVE TO SAY THAT IT IS PROBABLE THAT THE DECEASED WERE KILLED BY UNKNOWN ANC SUPPORTERS.

Reference 646 - 0.01% Coverage

AT FOLWENI IN THE UMBUMBULU DISTRICT, SOUTH OF DURBAN, TWENTY IFP SUPPORTERS WERE KILLED IN AN ATTACK ON A RELIGIOUS CEREMONY ON 26 OCTOBER 1992. ON THE AVAILABLE EVIDENCE, THAT THE KILLINGS WERE CARRIED OUT BY A GROUP OF FIFTEEN UNIDENTIFIED ASSAILANTS WEARING BALACLAVAS AND SADF UNIFORMS, THE COMMISSION IS UNABLE TO MAKE A CONCLUSIVE FINDING. THE KILLINGS AMOUNT TO GROSS VIOLATIONS OF HUMAN RIGHTS.

Reference 647 - 0.01% Coverage

363 A few weeks later, on the night of 8 November 1992, a group of armed men attacked several homesteads under Chief Molefe's jurisdiction. At least three people were killed, including Molefe's senior induna, and several huts burnt to the ground. Police were called, but made no attempt to detain the attackers. Two people were subsequently arrested, including the younger brother of one of the deceased. He was kept in detention without charge from 9 to 30 November and on his release laid charges against police for wrongful arrest. THE COMMISSION FINDS THAT ON THE NIGHT OF 8 NOVEMBER 1992, THREE PEOPLE WERE KILLED WHEN A GROUP OF UNKNOWN ARMED MEN ATTACKED SEVERAL HOMESTEADS UNDER THE JURISDICTION OF CHIEF MOLEFE ON THE NORTH COAST. THE KILLINGS AMOUNT TO GROSS VIOLATIONS OF HUMAN RIGHTS, AND UNKNOWN PERSONS OPPOSED TO THE ANC ARE HELD ACCOUNTABLE.

Reference 648 - 0.01% Coverage

Molefe [KN/FS/366/VH], was among the deceased; the chief escaped with injuries. He subsequently fled the area and to this day has not returned to his home. He is now destitute. To date, no one has been charged in connection with the massacre. THE COMMISSION FINDS THAT ON THE NIGHT OF 7 NOVEMBER 1993, ELEVEN ANC SUPPORTERS WERE KILLED IN AN ATTACK ON CHIEF MOLEFE'S HOMESTEAD. THE KILLINGS REPRESENT GROSS VIOLATIONS OF HUMAN RIGHTS. ON THE AVAILABLE EVIDENCE THAT THE ATTACK WAS CARRIED OUT BY SIXTY TO EIGHTY ARMED MEN WEARING BALACLAVAS, THE COMMISSION IS UNABLE TO MAKE A CONCLUSIVE FINDING ON THE KILLINGS, SAVE TO SAY THAT IT IS PROBABLE THAT THE DECEASED WERE KILLED BY UNKNOWN PERSONS OPPOSED TO THE ANC.

Reference 649 - 0.01% Coverage

52 Highflats CR 45 / 09 / 1995, where an IFP leader in Ixopo, Mr JJ Ngubane, was allegedly killed by Mr Simphiwe Dlamini, in concert with other SDU members, NITU, Pietermaritzburg, copy with the Commission's Investigation Unit. Dlamini is also wanted in connection with 45 / 05 / 93 attempted murder

in Highflats. 53 This was due in part to the restructuring of the ANC region, which resulted in areas like Richmond falling under the regional headquarters in Durban. It is alleged that Nkabinde saw this as a threat and campaigned for the re-incorporation of Richmond into the Pietermaritzburg sub-region. His supporters staged a sit-in at the Pietermaritzburg ANC office until it was closed. 54 Military Intelligence report, 28 October 1996, reported by the Network of Independent Monitors. 55 Vezi and Khuzwayo were charged and acquitted for the killing of 14 ANC people in Mahehle on 18 February 1994, Human Rights Commission, June 1994.

Reference 650 - 0.01% Coverage

THE COMMISSION FINDS THAT THE ANC AT A REGIONAL LEVEL IN KWAZULU/NATAL KNEW THAT MEMBERS OF THE SDUS WERE ENGAGED IN UNLAWFUL ACTS, INCLUDING KILLING, ATTEMPTED KILLING AND SEVERE ILL-TREATMENT, WHICH CONSTITUTED GROSS VIOLATIONS OF HUMAN RIGHTS, AND THAT IT FAILED TO ENSURE THAT THOSE RESPONSIBLE FOR SUCH VIOLATIONS WERE DISCIPLINED OR BROUGHT TO JUSTICE. TO THIS EXTENT, THE ANC IS ACCOUNTABLE FOR SUCH GROSS VIOLATIONS OF HUMAN RIGHTS.

Reference 651 - 0.01% Coverage

63 Mr Melusi Gwala, Mr Southern Zondi and Mr Khayi Mtshali were charged with the killing of Mbongwa and Ximba. They were acquitted after a witness declined to testify for fear of his family's safety. In another case, Mr Khomba Mngadi (ex-IFP, Patheni group SDU), Mr Musa Mkhize (Smozomeni SDU) and Mr Mxolisi Dlamini were charged and convicted for the killing of Mbongwa and Ximba and were sentenced to 25 years imprisonment. Mr Mpa Mtolo was acquitted in this trial. At trial witnesses testified that Nkabinde was present at the killing. No finding was made on the death of Mzo Mkhize and Mfaniseni Latha who were killed by stray bullets. All of the above are Richmond SDU members. Human Rights Committee, June 1996.

Reference 652 - 0.01% Coverage

THE COMMISSION FINDS THAT NKABINDE WAS RESPONSIBLE FOR PROMOTING AND/OR CONDONING A CLIMATE IN WHICH GROSS VIOLATIONS OF HUMAN RIGHTS, INCLUDING KILLING AND ATTEMPTED KILLING, COULD AND DID TAKE PLACE, AND FACILITATED THE COMMISSION OF SUCH VIOLATIONS. HE IS ACCORDINGLY HELD ACCOUNTABLE FOR GROSS VIOLATIONS OF HUMAN RIGHTS THAT AROSE FROM SDU OPERATIONS IN THE AREA UNDER HIS CONTROL.

Reference 653 - 0.01% Coverage

CONSEQUENTLY, IT IS THE CONTEMPLATED FINDING OF THE COMMISSION THAT THE SPU PROJECT CONSTITUTES A GROSS VIOLATION OF HUMAN RIGHTS WHICH ENTAILED DELIBERATE PLANNING ON THE PART OF THE IFP AND MEMBERS OF THE THEN KWAZULU GOVERNMENT AND POLICE FORCE.

Reference 654 - 0.01% Coverage

THE COMMISSION FINDS THAT TEN PEOPLE WERE KILLED AND SIX OTHERS INJURED ON 5 MARCH 1993 BY IFP SUPPORTERS WHO ATTACKED A VEHICLE IN THE TABLE MOUNTAIN AREA AND OPENED FIRE ON ITS PASSENGERS. THE KILLINGS AMOUNT TO GROSS VIOLATIONS OF HUMAN RIGHTS. NDLOVU AND DLADLA HAVE BOTH APPLIED FOR AMNESTY IN RESPECT OF THEIR ROLES IN THE INCIDENT.

Reference 655 - 0.01% Coverage

THE COMMISSION FINDS THAT ON 22 JULY 1993, TEN MEN WERE KILLED BY UNKNOWN IFP SUPPORTERS IN AN AMBUSH ON A BUS TRANSPORTING PEOPLE TO THE ALUSAF SMELTER AT ENSELENI. THE KILLINGS AMOUNT TO GROSS VIOLATIONS OF HUMAN RIGHTS AND UNKNOWN SUPPORTERS OF THE IFP ARE HELD RESPONSIBLE FOR THEM.

Reference 656 - 0.01% Coverage

402 Many children were victims of gross human rights violations in Natal and KwaZulu. While some of these children were caught in crossfire, or were victims

Reference 657 - 0.01% Coverage

410 As with children, the majority of women who were victims of gross human rights violations were not deliberately targeted but were caught in crossfire or were victims of indiscriminate attacks on party strongholds. The majority of victims in massacres of households were women. However, a number of women were specifically targeted for their political activism, their relation to male activists or in order to strike terror into the heart of communities. The Commission heard that both ANC and IFP supporters were guilty of extreme violence against women.

Reference 658 - 0.01% Coverage

68 Justice Nkwanyana was a KZP member stationed at KwaMashu. He was found to be a perpetrator of a number of gross human rights violations reported to the Commission. He is now deceased.

Reference 659 - 0.01% Coverage

427 In the months leading up to the elections, KwaZulu and Natal experienced the worst wave of political violence in the region's history. The incidence of politically motivated human rights violations rose dramatically following the announcement of the election date.

Reference 660 - 0.01% Coverage

23 The KwaZulu-Natal regional office of the Commission was allocated the task of administering the submissions received from victims of violations in the Orange Free State. To this end, officers of the Commission were assigned to sub-regional offices in the Free State, and teams of statement-takers were sent to towns around the province in order to gather a wide range of evidence of violations. The Amnesty Committee and the Human Rights Violations Committee of the Commission held hearings in the main towns in the province. Comparatively few statements were received from the Orange Free State, the total representing no more than a fifth of all the statements received and administered by the Commission's Durban office.

24 Most of the reports of human rights violations from the Orange Free State were received for the late 1980s and early 1990s, when resistance to apartheid structures and policies was at its most intense in the province and in the country as a whole.

Reference 661 - 0.01% Coverage

Mr Leepo Lawrance Moleke told a hearing of the Human Rights Violations Committee that, in 1972, he was detained and severely tortured in Bloemfontein for his membership of the ANC. In custody, he was accused of conspiring to overthrow the government, was blindfolded, had his hands and feet cuffed together and was repeatedly electrocuted by means of an electric cord connected to the running engine of a car.

He was held in custody for a further two weeks and told the Commission that, as a result of his torture, he suffered permanent paralysis in the right leg as well as significantly impaired hearing and sight [KZN/TDM/006/KRS]. IN REVIEWING EVIDENCE OF GROSS HUMAN RIGHTS VIOLATIONS PERPETRATED BY THE STATE IN THE ORANGE FREE STATE DURING THIS PERIOD, THE COMMISSION FINDS THAT THE SAP PERPETRATED ACTS OF ASSAULT AND TORTURE ON DETAINEES AND OPPONENTS OF THE SOUTH AFRICAN GOVERNMENT, ESTABLISHING A PATTERN OF ABUSE THAT INCREASED IN INTENSITY THROUGH SUBSEQUENT PERIODS.

Reference 662 - 0.01% Coverage

IN REVIEWING EVIDENCE OF GROSS HUMAN RIGHTS VIOLATIONS COMMITTED BY THE STATE SECURITY FORCES IN THE ORANGE FREE STATE DURING THIS PERIOD, THE COMMISSION FINDS THAT THE SAP ASSAULTED AND TORTURED DETAINEES AS PART OF A SYSTEMATIC CAMPAIGN TO SUPPRESS AND SILENCE OPPOSITION TO THE APARTHEID POLICIES OF THE SOUTH AFRICAN GOVERNMENT. THE SAP IS FOUND TO HAVE ACTED WITH LESS AND LESS RESTRAINT AGAINST PUBLIC DEMONSTRATIONS AND PROTESTS AND RESORTED READILY TO THE UNJUSTIFIED USE OF DEADLY FORCE, FIRING ON CROWDS WITH LIVE AMMUNITION, RESULTING IN DEATHS AND INJURIES TO MEMBERS OF THE PUBLIC.

Reference 663 - 0.01% Coverage

THE COMMISSION FINDS THAT THIS PERIOD WAS CHARACTERISED BY A DRAMATIC INCREASE IN ILLEGAL CROSS-BORDER ACTIVITIES BY THE SAP AND SADF, AND AN INCREASING NUMBER OF COVERT OPERATIONS IN LESOTHO WHICH RESULTED IN LARGE NUMBERS OF GROSS HUMAN RIGHTS VIOLATIONS FOR WHICH THE SAP AND THE SADF ARE HELD ACCOUNTABLE.

Reference 664 - 0.01% Coverage

Jacob Thabethe, Alfred Malema and Frans Kekana were also charged with conspiracy to sabotage a power station and a training college in Kroonstad³. THE COMMISSION FINDS THAT MEMBERS OF THE ANC PARTICIPATED IN ACTS OF SABOTAGE AGAINST STATE INSTALLATIONS AND THAT SOME OF THESE ACTS LED TO DEATHS OF AND INJURIES TO INNOCENT PERSONS. SUCH DEATHS AND INJURIES WERE GROSS VIOLATIONS OF HUMAN RIGHTS FOR WHICH THE ANC IS HELD ACCOUNTABLE.

Reference 665 - 0.01% Coverage

IN REVIEWING EVIDENCE OF GROSS HUMAN RIGHTS VIOLATIONS BY THE STATE AND ALLIED GROUPS IN THE ORANGE FREE STATE DURING THIS PERIOD (1983–89), THE COMMISSION FINDS THAT THE SAP MADE WIDESPREAD AND ROUTINE USE OF ASSAULT, TORTURE AND EMOTIONAL AND PSYCHOLOGICAL ABUSE, AS PART OF A SYSTEMATIC PATTERN OF BEHAVIOUR. THE PERIOD WAS ALSO CHARACTERISED BY AN INCREASE IN THE NUMBER OF DEATHS IN POLICE CUSTODY. THE COMMISSION FINDS THAT SUCH DEATHS WERE GROSS VIOLATIONS OF HUMAN RIGHTS FOR WHICH THE SAP IS HELD ACCOUNTABLE.

Reference 666 - 0.01% Coverage

THE COMMISSION FINDS THAT THE QWAQWA POLICE FORCE CARRIED OUT ITS DUTIES IN A BIASED MANNER, THAT IT OVERTLY SUPPORTED THE DNP, AND THAT IT ROUTINELY ENGAGED IN ASSAULT AND TORTURE OF THOSE WHOM IT PERCEIVED AS OPPONENTS OF THE SOUTH AFRICAN GOVERNMENT. FOR THE GROSS HUMAN RIGHTS VIOLATIONS COMMITTED THROUGH THESE UNLAWFUL ACTS, THE SAP AND THE BOPHUTHATSWANA POLICE ARE HELD ACCOUNTABLE.

Reference 667 - 0.01% Coverage

113 The Commission received further reports of arson attacks on the homes and property of town councillors. Victims reported that the attacks related to their refusal to resign their positions on councils and were part of a sustained campaign to force them to do so. In attacks such as these, perpetrators could not always be clearly identified. IN RESPECT OF THE ARSON ATTACKS ON THE HOUSES AND PROPERTY OF MEMBERS AND SUPPORTERS OF THE DNP, THE COMMISSION FINDS THAT UNKNOWN PERSONS, AFFILIATED TO OR IN SUPPORT OF ORGANISATIONS OPPOSED TO THE DNP, ENGAGED IN UNLAWFUL CRIMINAL ACTS ARISING OUT OF POLITICAL INTOLERANCE AND CONSTITUTING GROSS VIOLATIONS OF HUMAN RIGHTS.

Reference 668 - 0.01% Coverage

roadblock and opened fire. Many protesters were injured in the shooting. Phole, aged fifteen at the time, was shot in the face and lost an eye as a result. She told the Commission that police followed the wounded to the Pelonomi hospital and made arrests. She never brought charges against the police in connection with the shooting incident for fear of police harassment or arrest if she did [KZN/ ZJ/094/BL]. THE COMMISSION FINDS THAT UNKNOWN MEMBERS OF THE SAP USED UNJUSTIFIED DEADLY FORCE AND COMMITTED GROSS HUMAN RIGHTS VIOLATIONS ON 15 FEBRUARY 1990 WHEN THEY OPENED FIRE ON MARCHERS AT BOTSHABELO.

Reference 669 - 0.01% Coverage

123 Following increasing concern among government officials and other security forces about the rising number of municipal police involved in criminal activities, municipal police finally came under the control of the SAP in November 1988. THE COMMISSION FINDS THAT THE MUNICIPAL POLICE FORCES ESTABLISHED BY BLACK LOCAL AUTHORITIES WERE POORLY TRAINED AND RESORTED READILY TO ILLEGAL ACTS IN THE CARRYING OUT OF THEIR DUTIES, WHICH INCLUDED THE ASSAULT AND KILLING OF MEMBERS OF THE PUBLIC, CONSTITUTING GROSS HUMAN RIGHTS VIOLATIONS FOR WHICH THE BLACK LOCAL AUTHORITIES ARE HELD ACCOUNTABLE.

Reference 670 - 0.01% Coverage

THE COMMISSION FINDS THAT THE CREATION OF GROUPS SUCH AS THE EAGLES, AND THE STATE'S SUPPORT OF OTHER GROUPINGS SUCH AS THE A-TEAM AND THE THREE MILLION GANG, CONTRIBUTED DIRECTLY TO INCIDENTS OF PUBLIC AND POLITICAL VIOLENCE AND FOSTERED A CLIMATE OF VIOLENCE IN WHICH SUCH UNLAWFUL ACTS COULD TAKE PLACE. THE SAP IS HELD ACCOUNTABLE FOR GROSS VIOLATIONS OF HUMAN RIGHTS CONNECTED TO THE UNLAWFUL ACTIVITIES OF SUCH GROUPS, TOGETHER WITH THE GANGS THAT CARRIED OUT SUCH VIOLATIONS.

Reference 671 - 0.01% Coverage

145 'Anti-comrade' groups proliferated in towns in the province. Mr Mphithizeli Nelson Ngo told the Amnesty Committee that Security Branch headquarters in Bloemfontein mandated Security Police in Brandfort to recruit an 'anti-comrade' group in Brandfort. This was done with the co-operation of a local councillor. It was said that a prison department sergeant recruited convicted criminals from prisons and assumed a leadership position in the group himself. The group's task was to confront political activists from the UDF or civic organisations where they congregated in shebeens and recreational facilities, pick fights with them and plant knives and firearms on the bodies of people who were killed. This was meant to help in the cover-up of the Security Branch's own activities. THE COMMISSION FINDS THAT THE SAP DELIBERATELY ASSISTED, AND IN SOME CASES FOUNDED, VIGILANTE ORGANISATIONS AND ITS MEMBERS ACTIVELY DIRECTED SUCH ORGANISATIONS TO COMMIT CRIMINAL ACTS AGAINST THOSE WHOM THE SAP PERCEIVED TO BE ENEMIES OF THE STATE. FURTHER, POLICE ARE FOUND TO HAVE FAILED TO TAKE ACTION TO PREVENT VIGILANTE ATTACKS ON MEMBERS OF THE PUBLIC. THE SAP IS HELD ACCOUNTABLE FOR THE GROSS VIOLATIONS OF HUMAN RIGHTS ACCOMPANYING THE UNLAWFUL ACTS OF SUCH VIGILANTE ORGANISATIONS.

Reference 672 - 0.01% Coverage

151 Several arms caches were uncovered by the police. On 9 May 1985, police uncovered an arms cache between Vredefort and Kroonstad – "the biggest ever found" – including thirty-one limpet mines, AK-47 assault rifles, pistols, grenades and ammunition. In January 1986, Brandfort police uncovered two explosive devices buried in a garden. In the same month, explosive devices were discovered in a metal box at the Maseru Bridge border post. On 15 December 1987, a suspected ANC member was killed by his own grenade at a roadblock near Bloemfontein. THE COMMISSION FINDS THAT ANC MEMBERS CARRIED OUT A NUMBER OF SABOTAGE ACTIONS AGAINST STATE INSTALLATIONS, SOME OF WHICH RESULTED IN GROSS HUMAN RIGHTS VIOLATIONS FOR WHICH THE ANC IS HELD ACCOUNTABLE. THEY FURTHER DETONATED EXPLOSIVE DEVICES AT SO-CALLED SOFT TARGETS, DELIBERATELY CAUSING LOSS OF LIFE, WHICH CONSTITUTED GROSS VIOLATIONS OF HUMAN RIGHTS FOR WHICH THE ANC IS HELD ACCOUNTABLE.

Reference 673 - 0.01% Coverage

158 This period saw a significant increase in the number of reported acts of aggression on the part of ANC SDUs, involving shootings, stabbings, arson attacks and assault. Other political groups allegedly involved in human rights abuses in the Orange Free State in this period are the AWB, vigilante groups and, to a small extent, the IFP. Further reports were received of attacks perpetrated against members of the DNP.

Reference 674 - 0.01% Coverage

THE COMMISSION FINDS THAT UNKNOWN MEMBERS OF THE SAP, BY THE UNJUSTIFIED USE OF DEADLY FORCE, CAUSED THE DEATHS OF FIVE YOUTHS AND THE INJURY OF AN UNKNOWN NUMBER OF STUDENTS IN A SHOOTING INCIDENT AT VILJOENSKROON ON 19 APRIL 1990. SUCH ACTS AMOUNT TO GROSS VIOLATIONS OF HUMAN RIGHTS AND THE SAP IS HELD ACCOUNTABLE FOR THEM.

Reference 675 - 0.01% Coverage

Ms Sinah Mosele Matsie was thirteen when police shot her in the knee in her Senekal home on 11 February 1990. Her grandmother, Ms Adelaide Matsie, and her grandfather were shot in the same incident and were wounded in the thigh and in the hip respectively. The shootings occurred when students engaged in protest action ran into the Matsie house to hide from the police who were pursuing them [KZN/LIT/001/FS]. IN REVIEWING EVIDENCE OF GROSS HUMAN RIGHTS VIOLATIONS PERPETRATED BY THE STATE AND ALLIED GROUPS IN THE ORANGE FREE STATE DURING THIS PERIOD (1990 – MAY 1994), THE COMMISSION FINDS THAT THE SAP MADE WIDESPREAD AND ROUTINE USE OF ASSAULT, TORTURE AND EMOTIONAL AND PSYCHOLOGICAL ABUSE AS PART OF A SYSTEMATIC PATTERN OF ABUSE DIRECTED AGAINST OPPONENTS OF THE SOUTH AFRICAN GOVERNMENT. IT FINDS THAT MEMBERS OF THE SAP WERE RESPONSIBLE FOR SEVERAL DEATHS OF DETAINEES WHILST IN CUSTODY. IT FINDS FURTHER THAT THE MEMBERS OF THE SAP WERE RESPONSIBLE FOR WIDESPREAD UNJUSTIFIED USE OF DEADLY FORCE, RESULTING IN INJURY AND DEATH. THESE ARE GROSS VIOLATIONS OF HUMAN RIGHTS FOR WHICH THE SAP IS HELD RESPONSIBLE.

Reference 676 - 0.01% Coverage

THE COMMISSION FINDS THAT UNKNOWN MEMBERS OF THE ANC AND OF THE UDF WERE RESPONSIBLE FOR THE PERPETRATION OF GROSS HUMAN RIGHTS VIOLATIONS ARISING FROM A LACK OF POLITICAL TOLERANCE. SUCH ABUSES INCLUDED ARSON ATTACKS, SEVERE ASSAULT, KILLING AND ATTEMPTED KILLING OF INDIVIDUAL TOWN COUNCILLORS AND MEMBERS OF OPPOSING POLITICAL PARTIES. THESE ACTS WERE GROSS VIOLATIONS OF HUMAN RIGHTS FOR WHICH THE ANC AND UDF ARE HELD ACCOUNTABLE.

Reference 677 - 0.01% Coverage

THE COMMISSION FINDS THAT UDF AND ANC MEMBERS, INCLUDING MEMBERS OF ANC SDUS, PERPETRATED GROSS HUMAN RIGHTS VIOLATIONS WHICH RESULTED IN THE INJURY AND DEATHS OF PERSONS PERCEIVED TO BE COLLABORATORS WITH THE SOUTH AFRICAN GOVERNMENT AND OF PERSONS HOLDING PUBLIC OFFICE ON LOCAL GOVERNMENT BODIES.

Reference 678 - 0.01% Coverage

193 Mr Samuel Chobane Papala reported that three men, allegedly AWB members, abducted him in Hoopstad in 1993 while he was walking in the street wearing an ANC flag. They put him into a bakkie [van] and sat on top of him so that he could not see what was happening. He was assaulted, hit with a gun butt and kicked. He was then locked in a garage from which he managed to escape. The attackers were not identified [KZN/BEN/001/FS]. THE COMMISSION FINDS THAT MEMBERS OF CIVILIAN RIGHT-WING GROUPS WERE RESPONSIBLE FOR SEVERAL RACIAL ATTACKS ON BLACK PEOPLE IN THE ORANGE FREE STATE. THESE ATTACKS FREQUENTLY LED TO INJURIES AND DEATHS OF THE VICTIMS AND CONSTITUTE A GROSS VIOLATION OF HUMAN RIGHTS.

Reference 679 - 0.01% Coverage

197 Little villages like Vierfontein and possibly Kragbron were bought up by the farming community as safe settlements for elderly Afrikaners, often retired farmers. Security arrangements were tight, with residents and police taking special safety measures. Even these communities were targeted for attack. THE COMMISSION FINDS THAT THE INJURIES AND DEATHS CAUSED BY APLA MEMBERS IN THE ORANGE

FREE STATE PROVINCE BETWEEN 1990 AND APRIL 1994 WERE GROSS HUMAN RIGHTS VIOLATIONS BROUGHT ABOUT BY THE DELIBERATE ACTIONS OF APLA MEMBERS ACTING WITHIN THE MANDATE OF THE PAC'S POLICIES. APLA AND THE PAC ARE HELD ACCOUNTABLE FOR SUCH VIOLATIONS.

Reference 680 - 0.01% Coverage

THE COMMISSION FINDS THAT VIOLATIONS WERE PERPETRATED AGAINST INDIVIDUAL MEMBERS OF THE ANC BY THE SAP AND MEMBERS OF OPPOSING POLITICAL ORGANISATIONS WERE GROSS VIOLATIONS OF HUMAN RIGHTS FOR WHICH THE SAP IS HELD ACCOUNTABLE.

Reference 681 - 0.01% Coverage

13 Of all submissions to the Commission received nationally from victims alleging gross violations of human rights, only 8.4 per cent per cent were from the western Cape.

Reference 682 - 0.01% Coverage

16 The incidence of gross human rights violations in the western Cape over the Commission's mandate period reached two sharp peaks in 1976 and 1985/86, while maintaining a fairly constant level in the 1990s. The reasons for these peaks are discussed in the sections dealing with the relevant periods.

Reference 683 - 0.01% Coverage

B2B.2 (1) Percentage of human rights violations in the region – all periods

Reference 684 - 0.01% Coverage

29 Severe ill treatment and torture were the chief forms of gross human rights violations reported for this fifteen-year period.

Reference 685 - 0.01% Coverage

31 The anti-pass campaign of 1960 saw the first gross violations of human rights in the western Cape in the Commission's mandate period. The PAC had called on all African men to leave their passes at home on 21 March and give themselves up for arrest at their nearest police station. The ANC had planned their anti-pass campaign for ten days later. People responded in both urban and rural areas of the western Cape. At Nyanga, PAC supporters congregated on a rugby field and then marched to the Philippi police station to give themselves up for arrest.

Reference 686 - 0.01% Coverage

Percentage of human rights violation in the region – 1960–75

Reference 687 - 0.01% Coverage

CONCERNING THE WIDESPREAD EXECUTION OF POQO MEMBERS, THE COMMISSION FINDS THAT JUDICIAL EXECUTIONS FOR POLITICALLY MOTIVATED OFFENCES CONSTITUTE A GROSS HUMAN RIGHTS VIOLATION.

Reference 688 - 0.01% Coverage

THE COMMISSION FINDS THAT THERE IS EVIDENCE OF WIDESPREAD TORTURE OF DETAINEES IN PRETORIA DURING THIS PERIOD, AND THAT MR LOOKSMART NGUDLE'S DEATH WAS A DIRECT OR INDIRECT RESULT OF SUCH TORTURE. THE COMMISSION FINDS THAT, ALTHOUGH IT IS NOT IN A POSITION TO REVERSE THE FINDINGS OF THE INQUEST COURT, THE DETENTION WITHOUT TRIAL OF THE IMAM ABDULLAH HARON WAS UNDOUBTEDLY A GROSS VIOLATION OF HUMAN RIGHTS, AND HIS DEATH WAS CAUSED DIRECTLY OR INDIRECTLY BY HIS EXPERIENCES AT THE HANDS OF THE SECURITY POLICE.

Reference 689 - 0.01% Coverage

Percentage of human rights violations in the region – 1976–82

Reference 690 - 0.01% Coverage

6 Information taken from United Nations Economic and Social Council, Commission on Human Rights, compiled by the Special Committee against Apartheid, February 1979.

Reference 691 - 0.01% Coverage

THE COMMISSION FIND THAT THE KILLINGS OF MR 'FRITZ' JANSEN AND MR GEORGE BEETON, AS WELL AS THOSE OF THE OTHER PEOPLE MENTIONED ABOVE, WERE GROSS VIOLATIONS OF HUMAN RIGHTS.

Reference 692 - 0.01% Coverage

98 On 4 June 1982 Mr Michael Younghusband (26) was killed when a bomb exploded in a lift in the Cape Town Centre building. The target was presumably the President's Council, which had offices in the building. The ANC acknowledged responsibility for this bomb in its submission to the Commission, but no amnesty applications were received for this fatal attack. THE COMMISSION FINDS THAT THE SABOTAGE ACTIONS BY THE ANC IN THE PERIOD WERE NOT EXCLUSIVELY AIMED AT INSTALLATIONS. IN A NUMBER OF INSTANCES, SUCH AS THE ATTACKS ON KOEBERG, THE SUPREME COURT AND THE OFFICES OF THE PRESIDENT'S COUNCIL, THERE WAS A HIGH RISK OF HUMAN INJURY. THE ATTACK ON THE PRESIDENT'S COUNCIL OFFICE DID IN FACT RESULT IN THE KILLING OF MR MICHAEL YOUNGHUSBAND. THE COMMISSION FINDS THAT THE PLACING OF THIS BOMB WAS PARTICULARLY RECKLESS, IN THAT THE BUILDING HOUSED MANY OFFICES THAT WERE OF A PURELY CIVILIAN NATURE, AND THAT THE BOMBING CONSTITUTES A GROSS VIOLATION OF HUMAN RIGHTS.

Reference 693 - 0.01% Coverage

Percentage of human rights violations in the region – 1983–1989

Reference 694 - 0.01% Coverage

153 During the mid-1980s, serious tensions and conflicts arose between the residents and authorities in George over the proposed forcible removal of people from an informal settlement, Lawaaikamp, to a new township called Sandkraal. This contributed to the protests in George that resulted in the deaths of at

least five people in early 1986. In February 1986, Mr Rhotsi Mbuyiselo Jonas Jack (22) [CT00558], Mr Skosana Meanwell Lakeyi [CT03065] and at least one other were shot dead by police during street protests. This was followed by the 'necklace' killing of Mr Afrika Nqumse [CT00559], an employee of the Development Board seen as responsible for the forced removals. On 3 March 1986, Oudtshoorn activist Nkosinathi Hlazo [CT00534] was shot dead by Captain GP Marx and others in George, allegedly while fleeing arrest. AS IN OTHER SITUATIONS WHERE COMMUNITIES WERE SUBJECTED TO FORCED REMOVAL FROM ONE PLACE TO ANOTHER, THE CONFLICTS WHICH AROSE CREATED CIRCUMSTANCES IN WHICH GROSS VIOLATIONS OF HUMAN RIGHTS TOOK PLACE. THE COMMISSION FINDS THAT THE INJURIES AND KILLINGS WERE CAUSED IN THE FIRST INSTANCE BY THE IMPLEMENTATION OF THIS POLICY OF FORCED REMOVALS.

Reference 695 - 0.01% Coverage

murder and continued for eighteen months. A 'trial within a trial' debated the admissibility of the confessions made by some of the accused, but the judge ruled them to be admissible and they served as the basis for the later convictions. Twenty-five of the accused were convicted in April 1988, on the basis of the controversial 'common purpose' doctrine. Fourteen were sentenced to death.¹³ THE COMMISSION FINDS THAT THE USE OF THE PRINCIPLE OF 'COMMON PURPOSE' ASSOCIATION FOR THE PURPOSES OF CONVICTIONS IN POLITICALLY RELATED MATTERS WAS INAPPROPRIATE. FURTHER, THE COMMISSION FINDS THAT THE IMPOSITION OF THE DEATH PENALTY FOR POLITICALLY MOTIVATED OFFENCES CONSTITUTED A GROSS HUMAN RIGHTS VIOLATION. IN THIS TRIAL IN WHICH FOURTEEN DEFENDANTS WERE SENTENCED TO DEATH, THE COMMISSION PARTICULARLY FINDS THE IMPOSITION OF THE DEATH PENALTY ON SIXTY-YEAR-OLD GRANDMOTHER MS EVELINA DE BRUIN TO BE EXCESSIVELY HARSH EVEN WITHIN THE CONTEXT OF THE LEGISLATION AT THE TIME.

Reference 696 - 0.01% Coverage

THE COMMISSION FINDS THAT THE THIRTEEN SENIOR AND JUNIOR MEMBERS OF THE SAP, SADF AND SARP, IN CONJUNCTION WITH THE RELEVANT STRUCTURES OF THE JMCS, PLANNED AND EXECUTED AN ACTION IN ATHLONE WHICH RESULTED IN SEVERAL GROSS VIOLATIONS OF HUMAN RIGHTS.

Reference 697 - 0.01% Coverage

189 The Commission accumulated data from human rights violations statements, amnesty statements and statements made to non-governmental organisations (NGOs) regarding the assault and torture of detainees prior to the state of emergency, under the emergency and under section 29.

Reference 698 - 0.01% Coverage

THE COMMISSION FINDS THAT EXECUTION FOR POLITICALLY-MOTIVATED OFFENCES CONSTITUTED A GROSS HUMAN RIGHTS VIOLATION.

Reference 699 - 0.01% Coverage

Percentage of human rights violations in the region – 1990–1994.

46 With the establishment of a range of human rights-linked NGOs in the western Cape in the 1990s, a great deal of recording and analytical work was done on most of these areas. The Commission cannot reproduce the excellent work of these structures, but has drawn upon it.

Reference 700 - 0.01% Coverage

427 The majority of violations committed by ANC members appear to be linked to the activities of the SDUs in the region, whose relationship to formal MK structures was frequently tenuous. Several amnesty applications and incidents of gross human rights violations were SDU-related and occurred after the suspension of armed struggle. However, the Commission received evidence that at least one SDU acted in the service of an agent of certain security forces (see below).

Reference 701 - 0.01% Coverage

progressively during the coming decades and created the context in which gross human rights violations became increasingly endemic.

Reference 702 - 0.01% Coverage

13 The gross human rights violations recorded for this period reflect the particular form of the contest between government and political opposition during the 1960s. Torture rather than killing was the dominant form of violation during this period. A distinguishing feature of the information collected by the Commission was that many of the people who made statements to the Commission about their detention and torture occupied leadership positions in the resistance movements, were largely male and were comparatively older than victims of torture in

Reference 703 - 0.01% Coverage

14 Despite the fact that the PAC played a central role in events during this period, the majority of gross human rights violations were reported by people identifying themselves as ANC members.

Reference 704 - 0.01% Coverage

22 Although the shootings at Sharpsville caused an international outcry against apartheid and precipitated the formation of underground armed opposition groups, it did not trigger the kind of widespread public protests and open street conflict that were occurred in subsequent decades. The violence of the police reaction to the pass protests and restrictions imposed on political activity effectively curtailed any largescale public political protest until the 1970s. Hence, the level of killing violations during this period is relatively low (the fourth most significant category of all human rights violations, after severe ill treatment, torture and associated violations) Where perpetrators of killings are identified by victims, the overwhelming majority name members of the SAP.

Reference 705 - 0.01% Coverage

Percentage of human rights violations in the former Transvaal – 1960–75

Reference 706 - 0.01% Coverage

THE COMMISSION FINDS THE FORMER STATE AND THE MINISTER OF POLICE DIRECTLY RESPONSIBLE FOR THE COMMISSION OF GROSS HUMAN RIGHTS VIOLATIONS IN THAT EXCESSIVE FORCE WAS UNNECESSARILY USED TO STOP A GATHERING OF UNARMED PEOPLE. POLICE FAILED TO GIVE AN

ORDER TO DISPERSE AND/OR ADEQUATE TIME TO DISPERSE, RELIED ON LIVE AMMUNITION RATHER THAN ALTERNATIVE METHODS OF CROWD DISPERSAL AND FIRED IN A SUSTAINED MANNER INTO THE BACK OF THE CROWD, RESULTING IN THE DEATH OF SIXTYNINE PEOPLE AND THE INJURY OF MORE THAN 300.

Reference 707 - 0.01% Coverage

THE COMMISSION FINDS THAT THE FORMER STATE, THE MINISTER OF POLICE AND MEMBERS OF THE SAP AND RAILWAY POLICE WERE RESPONSIBLE FOR THE COMMISSION OF GROSS HUMAN RIGHTS VIOLATIONS IN THAT THEY WERE RESPONSIBLE FOR THE TORTURE AND ASSAULT OF DETAINEES.

Reference 708 - 0.01% Coverage

THE COMMISSION FINDS FURTHER THAT THE REFUSAL OF THE MAGISTRATE TO HEAR EVIDENCE FROM OTHER POLITICAL DETAINEES OF TORTURE PERPETRATED BY THE POLICE ON DETAINEES IN THEIR CUSTODY FURTHER CREATED A CULTURE OF IMPUNITY WHICH LED TO FURTHER GROSS HUMAN RIGHTS VIOLATIONS BY THE POLICE.

Reference 709 - 0.01% Coverage

THE COMMISSION FINDS FURTHER THAT THE INQUEST MAGISTRATE'S FAILURE TO HOLD THE POLICE RESPONSIBLE FOR AHMED TIMOL'S DEATH CONTRIBUTED TO A CULTURE OF IMPUNITY THAT LED TO FURTHER GROSS HUMAN RIGHTS VIOLATIONS.

Reference 710 - 0.01% Coverage

DEATHS IN DETENTION OF DETAINEES AND THUS THE COMMISSION OF GROSS HUMAN RIGHTS VIOLATIONS.

THE COMMISSION FURTHER FINDS THE MINISTER OF JUSTICE AND THE DEPARTMENT OF JUSTICE DIRECTLY RESPONSIBLE FOR THE FAILURE OF MAGISTRATES TO TAKE ACCOUNT OF EVIDENCE PRESENTED TO THEM OF THE TORTURE AND ASSAULT OF DETAINEES BY THE POLICE. THE RELIANCE BY MAGISTRATES ON THE EVIDENCE OF THE POLICE WAS DIRECTLY RESPONSIBLE FOR CREATING A CULTURE OF IMPUNITY IN THE RANKS OF THE POLICE. THIS LED TO FURTHER DEATHS IN DETENTION AND GROSS HUMAN RIGHTS VIOLATIONS.

Reference 711 - 0.01% Coverage

THE COMMISSION FINDS THAT JOHN HARRIS WAS RESPONSIBLE FOR THE BOMBING OF THE JOHANNESBURG STATION, WHICH RESULTED IN THE DEATH OF ONE PERSON AND THE INJURY OF MANY OTHERS, INCLUDING CLASINA VOGEL, ON 24 JULY 1964. THE COMMISSION FINDS JOHN HARRIS RESPONSIBLE FOR THE COMMISSION OF GROSS HUMAN RIGHTS VIOLATIONS.

Reference 712 - 0.01% Coverage

87 The Commission heard of human rights violations that occurred in the rural and homeland areas in this period. Most violations stemmed from conflict between the government, which attempted to install chiefs amenable to its policies, and homeland residents, including popular chiefs themselves, who opposed this process.

Reference 713 - 0.01% Coverage

95 On 10 September 1969, Mr Jacob Monnakgotla was charged under the Terrorism Act and died in police custody the night before he was to appear in court, allegedly as a result of "natural causes". Before Monnakgotla died, evidence was heard in court that some of his eleven co-accused had been tortured. THE COMMISSION FINDS THAT MR NICODEMUS KGOATHE DIED IN POLICE CUSTODY ON 4 FEBRUARY 1969 AFTER HAVING BEEN ASSAULTED BY MEMBERS OF THE SAP SECURITY BRANCH NAMELY, WARRANT OFFICER FA SMITH, WARRANT OFFICER JM VENTER AND DETECTIVE SERGEANT A DE MEYER. THE COMMISSION FINDS FURTHER THAT THE FAILURE OF THE MAGISTRATE TO FIND THE POLICE RESPONSIBLE FOR THE TORTURE AND SUBSEQUENT DEATH OF NICODEMUS KGAOTHE CREATED A CLIMATE AND CULTURE OF IMPUNITY THAT DIRECTLY CONTRIBUTED TO THE COMMISSION OF FURTHER GROSS HUMAN RIGHTS VIOLATIONS BY THE SAP.

THE COMMISSION FINDS THAT SOLOMON MODIPANE WAS ARRESTED ON 25 FEBRUARY 1969 AND DIED THREE DAYS LATER IN HOSPITAL. THE COMMISSION FINDS THAT HIS TREATMENT WHILST IN CUSTODY OF THE POLICE RESULTED IN INJURIES WHICH CAUSED HIS DEATH. THE COMMISSION FINDS THE SAP RESPONSIBLE FOR HIS DEATH. THE COMMISSION FINDS THE MINISTER OF POLICE AND THE COMMISSIONER OF POLICE RESPONSIBLE FOR THE COMMISSION OF GROSS HUMAN RIGHTS VIOLATIONS.

THE COMMISSION FINDS THAT JACOB MONNAKGOTLA, A MEMBER OF THE BAKUBUNG TRIBE, DIED IN POLICE CUSTODY THE NIGHT BEFORE HE WAS TO APPEAR IN COURT. THE COMMISSION FINDS THAT, IN ALL PROBABILITY, JACOB MONNAKGOTLA WAS TORTURED AND SEVERELY ILL TREATED WHICH RESULTED IN HIS DEATH. THE COMMISSION FINDS THE POLICE AND THE COMMISSIONER OF POLICE RESPONSIBLE FOR THE COMMISSION OF GROSS HUMAN RIGHTS VIOLATIONS.

Reference 714 - 0.01% Coverage

THE COMMISSION FINDS THAT THE FORMER STATE'S HOMELANDS POLICY OF DEVELOPING ETHNICALLY-DIVIDED RESERVES SERVED THE INTERESTS OF PROTECTING AND PRESERVING THE RIGHTS OF THE WHITE MINORITY. THE COMMISSION FINDS FURTHER THAT THE IMPLEMENTATION OF THIS POLICY OF ETHNIC FRAGMENTATION AND FORCED REMOVALS LED DIRECTLY TO THE COMMISSION OF GROSS HUMAN RIGHTS VIOLATIONS. FURTHERMORE, THE FORMER STATE'S POLICY OF IMPOSING BANTU AUTHORITIES AND CHIEFS WAS A CENTRAL PART OF THE GOVERNMENT'S HOMELANDS POLICY. PAID BY THE GOVERNMENT OF THE DAY, THE CHIEFS EFFECTIVELY BECAME AN EXTENSION OF THE FORMER STATE'S MECHANISM OF CONTROL IN THE HOMELANDS.

Reference 715 - 0.01% Coverage

104 Although the PAC organised clandestinely in the Transvaal during this period, the Commission received no reports of violations where the PAC or Poqo were identified as perpetrators of gross human rights violations in that province. Most of the evidence before the Commission regarding the PAC concerned activists who were detained and tortured for their involvement in the activities of the organisation.

Reference 716 - 0.01% Coverage

106 The only information received by the Commission about gross human rights violations in the armed campaigns of this period came from a victim of a bomb planted by Mr John Harris, a member of the ARM.

As noted above, Harris was subsequently executed for his involvement in the bombing of the Johannesburg station

Reference 717 - 0.01% Coverage

113 Of the 1500 human rights violations statements received for this period (1976–82), over 400 were drawn from 1976 alone. The number of reports of severe ill treatment increase two and a half times compared to the previous period.

Reference 718 - 0.01% Coverage

Percentage of human rights violations in the former Transvaal – 1976–82

Reference 719 - 0.01% Coverage

164 'Rooi Rus' Swanepoel, who became known for his brutality in the course of the protest, already had a long history of involvement in gross human rights violations as chief interrogator of the Security Branch. He was, moreover, the founder of an anti-terrorist unit which later became Koevoet.

Reference 720 - 0.01% Coverage

DURING THIS PERIOD, 2 380 PEOPLE WERE WOUNDED. THE COMMISSION FINDS THE FORMER STATE, THE THEN PRIME MINISTER AND THE MINISTERS OF EDUCATION AND POLICE RESPONSIBLE AND DIRECTLY ACCOUNTABLE FOR GROSS HUMAN RIGHTS VIOLATIONS. THE COMMISSION FINDS THAT THE CILLIE COMMISSION APPOINTED BY THE STATE AT THE TIME FAILED TO TAKE INTO ACCOUNT THE EVIDENCE OF COMMUNITY LEADERS AND STUDENTS ABOUT THE UNDERLYING CAUSE FOR THE VIOLENCE. THE CILLIE COMMISSION FAILED TO MAKE FINDINGS AGAINST THE POLICE IN RESPECT OF THE MISHANDLING OF THE SITUATION AND THE EXCESSIVE FORCE UNLEASHED ON THE STUDENTS, DESPITE THE OVERWHELMING EVIDENCE OF THE NUMBER OF PEOPLE WHO DIED IN THE UPRISING AND THE NUMBER OF PEOPLE INJURED. THIS FAILURE ON THE PART OF A JUDICIAL OFFICER BROUGHT THE CILLIE COMMISSION INTO DISREPUTE AND HAS BEEN SEVERELY CRITICISED. THE CILLIE COMMISSION'S FAILURE CREATED A CULTURE OF IMPUNITY WITHIN THE POLICE FORCE, WHICH LED TO FURTHER GROSS HUMAN RIGHTS VIOLATIONS.

Reference 721 - 0.01% Coverage

THE COMMISSION FINDS THAT ELEVEN PEOPLE DIED IN POLICE CUSTODY BETWEEN 1976 AND 1978, AND FINDS THE POLICE RESPONSIBLE FOR THESE DEATHS IN DETENTION. THE COMMISSION FINDS THAT THE NUMBER OF INCIDENTS OF TORTURE ESCALATED AND THAT THE STATE, THE MINISTER OF POLICE AND THE COMMISSIONER OF POLICE WERE DIRECTLY RESPONSIBLE FOR GROSS HUMAN RIGHTS VIOLATIONS.

Reference 722 - 0.01% Coverage

THAT SHE WAS TORTURED BY THE APPLICATION OF ELECTRIC SHOCKS. THE COMMISSION FINDS THAT THE DISTRICT SURGEON FOR KRUGERSDORP AT THE TIME FAILED TO ACT PROFESSIONALLY WHEN MS MOHALE WAS TAKEN TO HIM FOR MEDICAL ATTENTION. HE FAILED TO ENSURE THAT SHE WAS REMOVED FROM POLICE CUSTODY TO A HOSPITAL FOR MEDICAL ATTENTION AND CARE. HE FAILED TO

ENSURE THAT THE POLICE WERE PREVENTED FROM KEEPING HER IN CUSTODY AND TORTURING HER FURTHER. THE COMMISSION FINDS THE DISTRICT SURGEON AND THE MINISTER OF HEALTH AT THE TIME RESPONSIBLE FOR GROSS HUMAN RIGHTS VIOLATIONS.

THE COMMISSION FINDS THAT MR GERALD THEBE WAS ARRESTED ON 29 JULY 1977 AS HE SECRETLY TRIED TO LEAVE THE COUNTRY. HE WAS DETAINED IN MAFIKENG WHERE THE SECURITY BRANCH INTERROGATED, BEAT AND TORTURED HIM. THE COMMISSION FINDS THE MINISTER OF POLICE RESPONSIBLE FOR THE SEVERE ILL TREATMENT OF MR THEBE AND CONSEQUENTLY RESPONSIBLE FOR THE COMMISSION OF GROSS HUMAN RIGHTS VIOLATIONS.

THE COMMISSION FINDS THAT MS DEBORAH MATSHOBA, AN EXECUTIVE MEMBER OF SASO, WAS SEVERELY ILL TREATED IN THE COURSE OF HER DETENTION, DURING WHICH SHE WAS HELD IN SOLITARY CONFINEMENT FOR TWELVE MONTHS AND TORTURED. THE COMMISSION FINDS THAT THE TREATMENT OF MS MATSHOBA CONSTITUTED SEVERE ILL TREATMENT AND TORTURE, AND FINDS THE FORMER STATE AND THE MINISTER OF LAW AND ORDER RESPONSIBLE FOR THE COMMISSION OF GROSS HUMAN RIGHTS VIOLATIONS.

THE COMMISSION FINDS THAT MR MATTHEWS MABELANE WAS ARRESTED AND DETAINED BY THE SECURITY BRANCH AT ZEERUST WHILE ATTEMPTING TO LEAVE THE COUNTRY FOR BOTSWANA IN 1978. IN JANUARY 1977, THE POLICE INFORMED HIS PARENTS THAT HE WAS DETAINED AT JOHN VORSTER SQUARE. ON 16 FEBRUARY 1977, HIS PARENTS WERE INFORMED THAT HE HAD JUMPED TO HIS DEATH FROM THE TENTH FLOOR OF JOHN VORSTER SQUARE DURING INTERROGATION. THE COMMISSION FINDS THE FORMER STATE, THE MINISTER OF POLICE AND THE COMMISSIONER OF POLICE AT THE TIME RESPONSIBLE FOR THE DEATH IN CUSTODY OF MR MATTHEWS MABELANE AND FOR THE GROSS VIOLATION OF HUMAN RIGHTS.

THE COMMISSION FINDS THAT MR WALTER SHANDU WAS ARRESTED AND DETAINED BY THE SAP IN 1978 WHILE ON HIS WAY TO ANGOLA. SHORTLY AFTERWARDS, THE MABOPANE POLICE INFORMED HIS PARENTS THAT HE HAD COMMITTED SUICIDE. THE COMMISSION FINDS THE POLICE RESPONSIBLE FOR THE DEATH OF MR SHANDU, AND THAT THE FORMER STATE, THE MINISTER OF POLICE AND THE COMMISSIONER OF POLICE AT THE TIME WERE RESPONSIBLE FOR HIS DEATH. THE COMMISSION FINDS THEM RESPONSIBLE FOR GROSS VIOLATIONS OF HUMAN RIGHTS.

THE COMMISSION FINDS FURTHER THAT FOUR PAC MEMBERS, CHARGED IN THE BETHAL TREASON TRIAL WITH FURTHERING THE AIMS OF THE PAC, DIED IN POLICE CUSTODY. THE COMMISSION FINDS THAT MR NAOBOTH NTSHUNTSHE, MR BONAVENTURE MALAZA, MR AARON KHOZA (IN PIETERMARITZBURG) AND MR SAMUEL MALINGA DIED AT THE HANDS OF THE POLICE. THE POLICE ALLEGED THAT ALL FOUR HAD COMMITTED SUICIDE. THE COMMISSION FINDS THE FORMER STATE AND THE MINISTER OF POLICE RESPONSIBLE FOR THEIR DEATHS AND RESPONSIBLE FOR THE GROSS VIOLATION OF HUMAN RIGHTS.

Reference 723 - 0.01% Coverage

THE COMMISSION FINDS THAT DR NEIL AGGETT, A MEDICAL DOCTOR AND A TRADE UNIONIST, DIED IN DETENTION ON 5 FEBRUARY 1982. THE POLICE ALLEGED THAT HE HAD COMMITTED SUICIDE. THE COMMISSION FINDS THAT THE INTENSIVE INTERROGATION OF DR AGGETT BY MAJOR A CRONWRIGHT AND LIEUTENANT WHITEHEAD, AND THE TREATMENT HE RECEIVED WHILE IN DETENTION FOR MORE THAN SEVENTY DAYS WERE DIRECTLY RESPONSIBLE FOR THE MENTAL AND PHYSICAL CONDITION OF DR AGGETT WHICH LED HIM TO TAKE HIS OWN LIFE. THE COMMISSION FINDS THE FORMER STATE, THE MINISTER OF POLICE, THE COMMISSIONER OF POLICE AND THE HEAD OF THE SECURITY BRANCH RESPONSIBLE FOR THE DETENTION, TORTURE AND DEATH OF DR NEIL AGGETT, CONSTITUTING GROSS VIOLATIONS OF HUMAN RIGHTS.

Reference 724 - 0.01% Coverage

THE COMMISSION FINDS THAT THE FAILURE OF MAGISTRATES TO TAKE THE COMPLAINTS OF DETAINEES SERIOUSLY AND THEIR RELIANCE ON THE EVIDENCE OF THE POLICE CONTRIBUTED TO A CULTURE OF IMPUNITY THAT LED TO FURTHER GROSS VIOLATIONS OF HUMAN RIGHTS. THE COMMISSION FINDS THE MINISTER OF JUSTICE RESPONSIBLE FOR THESE GROSS VIOLATIONS OF HUMAN RIGHTS.

Reference 725 - 0.01% Coverage

THE COMMISSION FINDS A NUMBER OF SECURITY BRANCH OPERATIVES RESPONSIBLE FOR THIS OPERATION AND, IN PARTICULAR, BRIGADIER WILLEM SCHOON, THE HEAD OF THE SECURITY BRANCH, WHO AUTHORISED THE OPERATION THAT LED TO THE COMMISSION OF GROSS HUMAN RIGHTS VIOLATIONS. THE COMMISSION FINDS FURTHER THAT MR CHRISTIAAN SIEBERT RORICH, MR ABRAHAM GROBBELAAR, MR JOE MAMASELA AND MR EPHRAIM MFALAPITSA WERE RESPONSIBLE FOR CARRYING OUT THE OPERATION, FOR THE DEATHS OF THE THREE COSAS MEMBERS AND FOR THE GROSS VIOLATION OF HUMAN RIGHTS.

THE COMMISSION FINDS THE FORMER STATE, THE MINISTER OF POLICE, THE COMMISSIONER OF POLICE AND THE HEAD OF THE SECURITY BRANCH RESPONSIBLE FOR THE GROSS VIOLATION OF HUMAN RIGHTS. THE COMMISSION FINDS THAT, THROUGH THEIR ACTIONS, THE FORMER

Reference 726 - 0.01% Coverage

199 Most gross human rights violations in the homelands during this period arose out of conflicts between the homeland security forces and the SADF, and insurgents attempting to return to the country after having received military training overseas. Many of these were students who had fled the country in the wake of the 1976 protest. Those who tried to assist the guerrillas were detained and tortured by homeland police, sometimes in collaboration with the SAP.

200 During the 1970s, the former state's bid to establish independent homelands reached its peak when Ciskei, Bophuthatswana, Lebowa, Gazankulu, Venda, KaNgwane, KwaZulu and KwaNdebele were granted self-governing status. Reports of gross violations of human rights rose sharply in the homelands.

Reference 727 - 0.01% Coverage

206 Residents who assisted insurgents often suffered severe consequences and frequently became victims of gross human rights violations.

Reference 728 - 0.01% Coverage

THE COMMISSION FINDS THAT VENDA POLICE OFFICERS RAMUSHWANA AND RAMALIGELA ARRESTED MR MBENGONI JONAH RAVELE IN DECEMBER 1980 FOR GIVING MK SOLDIERS SHELTER. THEY TORTURED HIM AND BURNT HIS PRIVATE PARTS. THE COMMISSION FINDS THAT MR RAVELE WAS IMPRISONED IN SIBASA FOR A PERIOD OF FIVE YEARS. THE COMMISSION FINDS OFFICERS RAMUSHWANA AND RAMALIGELA RESPONSIBLE FOR THE TORTURE AND SEVERE ILL TREATMENT OF RAVELE, AND THE VENDA GOVERNMENT RESPONSIBLE FOR GROSS VIOLATIONS OF HUMAN RIGHTS. THE COMMISSION FINDS THAT NKHETHENI REGINALD TSHIBAVHALEMBA WAS ARRESTED AND TORTURED BY THE VENDA SECURITY FORCES. THE COMMISSION FINDS THAT THE TORTURE AND SOLITARY CONFINEMENT TO WHICH HE WAS SUBJECTED CONSTITUTE GROSS HUMAN RIGHTS

VIOLATIONS FOR WHICH THE VENDA SECURITY FORCES AND THE VENDA GOVERNMENT ARE HELD RESPONSIBLE.

Reference 729 - 0.01% Coverage

THE COMMISSION FINDS THAT THE VENDA SECURITY FORCES ARRESTED AND DETAINED RESIDENTS WHO ASSISTED MK OPERATIVES – INCLUDING MR MUFHUNGO MR ALFRED DENG AND MR SAMUEL RADAMBA – WHO WERE THEN TORTURED AND SEVERELY ILL TREATED . THE COMMISSION FINDS THE VENDA SECURITY FORCES AND THE VENDA GOVERNMENT RESPONSIBLE FOR THE COMMISSION OF GROSS HUMAN RIGHTS VIOLATIONS.

THE COMMISSION FINDS THAT THE VENDA SECURITY FORCES WERE RESPONSIBLE FOR DEATHS IN CUSTODY. THE COMMISSION FINDS THAT MR TSHIKHUDO TSHIVASE SAMUEL MUGIVHELA WAS ARRESTED BY THE VENDA POLICE FOR HARBOURING AND FEEDING 'TERRORISTS'. THE COMMISSION FINDS THAT MR MUGIVHELA DIED ON 20 JANUARY 1984 WHILST IN THE CUSTODY OF THE VENDA POLICE. THE COMMISSION FINDS THE VENDA POLICE RESPONSIBLE FOR MUGIVHELA'S DEATH AND FOR THE GROSS VIOLATION OF HUMAN RIGHTS.

THE COMMISSION FINDS THAT THE VENDA SECURITY FORCES TARGETED MEMBERS OF THE LUTHERAN CHURCH BECAUSE THEY WERE OPPOSED TO THE HOMELANDS GOVERNMENT. THE COMMISSION FINDS THAT PASTOR SIMON FARISANI AND MR TSHIFHIWA ISAAC MUOFHE WERE DETAINED AND TORTURED DURING 1977. THE COMMISSION FINDS THAT MUOFHE DIED ON THE 12 NOVEMBER 1981, TWO DAYS AFTER HE HAD BEEN DETAINED BY THE VENDA POLICE. THE COMMISSION FINDS CAPTAIN RAMALIGELA AND CONSTABLE MANAGA RESPONSIBLE FOR MUOFHE'S ARREST, DETENTION, TORTURE AND DEATH, AND FOR GROSS VIOLATIONS OF HUMAN RIGHTS.

Reference 730 - 0.01% Coverage

THE COMMISSION FINDS THAT VENDA SECURITY FORCE MEMBERS RAMALIGELA, MANAGA, NESAMURI AND RAMBUDA DETAINED PASTOR FARISANI AND TORTURED HIM. THE COMMISSION FINDS THEM RESPONSIBLE FOR THE GROSS VIOLATION OF HUMAN RIGHTS.

THE COMMISSION FINDS THAT PASTOR NDANGANENI PETRUS PHASWANA WAS DETAINED BY THE CAPTAIN RAMALIGELA AND DETECTIVE MANAGA OF THE VENDA SECURITY FORCES WHO TORTURED AND ASSAULTED HIM. THE COMMISSION FINDS THEM RESPONSIBLE FOR THE COMMISSION OF GROSS HUMAN RIGHTS VIOLATIONS.

Reference 731 - 0.01% Coverage

THE COMMISSION FINDS THE ANC AND MK RESPONSIBLE FOR THE BOMBINGS IN GOCH STREET IN 1977. THE COMMISSION FINDS THAT MR SOLOMON MAHLANGU AND MR MONTY MOTAUNG WERE RESPONSIBLE FOR THE DEATHS OF MR RUPERT KESSNER AND MR KENNETH WOLFENDALE AND FOR THE GROSS VIOLATION OF HUMAN RIGHTS.

THE COMMISSION FINDS THAT MK MEMBERS MR STEPHEN MAFOKO, MR HUMPHREY MAKHUBO AND MR WILFRED MADELA WERE RESPONSIBLE FOR THE SILVERTON BANK SIEGE IN WHICH TWO CIVILIANS WERE KILLED AND A NUMBER INJURED. IN PARTICULAR THEY ARE RESPONSIBLE FOR THE DEATHS OF MS ANNA DE KLERK AND ANOTHER CIVILIAN AND ARE THUS RESPONSIBLE FOR THE GROSS VIOLATION OF HUMAN RIGHTS.

THE COMMISSION FINDS THE ANC AND THE HEAD OF MK RESPONSIBLE FOR THE GROSS VIOLATION OF HUMAN RIGHTS.

Reference 732 - 0.01% Coverage

Percentage of human rights violations in the former Transvaal – 1983–89

233 This period was notable for the highest levels of gross human rights violations experienced in the former Transvaal. Reported levels of severe ill treatment (approximately 1 700 violations), torture (about 1 200 violations) and killing (850 violations) reached unprecedented heights.

Reference 733 - 0.01% Coverage

236 The dominant contexts in which gross human rights violations took place throughout the region during this period were:

Reference 734 - 0.01% Coverage

246 Amnesty applicants who held senior positions within the police force confirmed to the Commission that the torture of detainees, including the use of electric shocks, was routine practice. The relatively small number of amnesty applications for acts of torture is a reflection of this attitude. Torture was not regarded as a gross human rights violation or infraction of police practice, and its perpetrators did not face sanctions either within or outside the police force. A further sense of impunity was created by the fact that the victim was often the only witness. Because of the often degrading and humiliating nature of torture, many of those tortured were reluctant to talk about their experiences. Those who died were permanently silenced.

Reference 735 - 0.01% Coverage

251 During the 1980s, all who represented government authority – including police, community councillors and chiefs – became targets of widespread violence. Even those perceived to have simply been beneficiaries of the apartheid system, such as business people or teachers antagonistic to school boycotts, were vulnerable to attack. The numbers of persons killed for these reasons amounted to approximately a third of the total number of people killed between 1983 and 1989. According to the Human Rights Commission, the total number of people killed between 1984 and 1989 was 3 500. Of these, about 1 000 are estimated to have been policemen or victims of necklacing or burning. Police General van der Merwe told the Commission that the killing of policemen in townships during the 1980s constituted a fundamental threat to state security and provided a reason for the government's use of extra-judicial forms of 'elimination' during this period.

Reference 736 - 0.01% Coverage

256 In its submission to the Commission, the UDF placed the gross human rights violations committed by its members and supporters into a context including factors such as political immaturity, a climate of mistrust and fear generated by state violence and disinformation campaigns, a militaristic culture, particularly amongst youth, and widespread detention of leaders who could have curbed excesses. The UDF also acknowledged that it encouraged the use of defensive violence when activists and leaders were violently attacked, and that some UDF leaders, particularly youth leaders, publicly promoted political intolerance.

Reference 737 - 0.01% Coverage

278 'Operation Palmiet' was strongly criticised both in South Africa and internationally. According to Mr Jules Browde SC, chair of Lawyers for Human Rights, the use of both the defence force and the police caused untold damage to race relations and the cause of human rights in South Africa. He said:

Reference 738 - 0.01% Coverage

279 The SADF's response was that the use of the army in civil disorder was not without precedent. The government had decided to use troops in Sebokeng because it felt that it was responsible for the protection of all South Africans, their property and the property of the state. The troops had manned roadblocks, thrown a cordon around the townships, protected important points, supplied logistical support, and provided communication and reconnaissance flights. THE COMMISSION FINDS THE FORMER STATE, THE MINISTER OF BANTU ADMINISTRATION AND THE VAAL LOCAL AUTHORITIES RESPONSIBLE FOR THE SEVERE ILL TREATMENT OF THE RESIDENTS OF BLACK TOWNSHIPS IN THE VAAL IN THAT THEY ALLOWED AND IMPOSED INCREASES IN RENT AT A TIME WHEN THE TOWNSHIPS HAD NO INFRASTRUCTURE AND THE AVERAGE INCOME OF RESIDENTS WAS AROUND R264.00 PER MONTH. THE COMMISSION FURTHER FINDS THAT THE REFUSAL OF THE LOCAL AUTHORITIES TO TAKE INTO ACCOUNT THE FACT THAT MOST RESIDENTS LIVED BELOW THE POVERTY LINE FURTHER CONTRIBUTED TO FUELLING INTENSE ANGER AGAINST THEM, WHICH CONTRIBUTED TO THE SUBSEQUENT VIOLENCE. THE COMMISSION FINDS THAT THE WAY IN WHICH THE CONFLICT WAS MANAGED BOTH BY THE LOCAL AUTHORITIES AND THE ORGANS OF THE FORMER STATE CONTRIBUTED TO AN ESCALATION IN VIOLENCE. AS A CONSEQUENCE, NINETY PEOPLE DIED AND COUNTLESS OTHERS WERE INJURED. THE PARTIES RESPONSIBLE FOR THESE GROSS HUMAN RIGHTS VIOLATIONS ARE THE FORMER STATE, THE MINISTER OF BANTU AFFAIRS AND THE VAAL LOCAL AUTHORITIES.

Reference 739 - 0.01% Coverage

AND GIVING THEM ADEQUATE TIME TO DISPERSE, AND THE FAILURE TO USE ALTERNATIVE METHODS TO DISPERSE THE CROWD RATHER THAN LIVE AMMUNITION LED TO THE DEATHS OF AT LEAST NINETY PEOPLE AND THE INJURY OF MANY OTHERS. THE COMMISSION FINDS THE COMMISSIONER OF POLICE, THE MINISTER OF LAW AND ORDER, AND THE VAAL COUNCILLORS RESPONSIBLE FOR THE GROSS VIOLATION OF HUMAN RIGHTS.

Reference 740 - 0.01% Coverage

THE COMMISSION FINDS THAT AGAINST THIS CONTEXT, 'OPERATION PALMIET' LED TO GROSS VIOLATIONS OF HUMAN RIGHTS FOR WHICH THE HEAD OF THE SADF, THE COMMISSIONER OF POLICE, THE MINISTER OF LAW AND ORDER, THE MINISTER OF DEFENCE AND THE FORMER STATE MUST ACCEPT RESPONSIBILITY. WHILST THE COMMISSION FINDS THAT THE STATE WAS RESPONSIBLE FOR THE INITIAL OUTBREAK OF VIOLENCE, AND THE BRUTALITY AND VIOLENCE THAT FOLLOWED, THE CIVIC STRUCTURES AND STUDENT ORGANISATIONS ARE HELD RESPONSIBLE FOR THE BRUTAL KILLING OF COUNCILLORS AND POLICEMEN. THE COMMISSION FINDS THAT THE NECKLACING OF MR CAESAR MOTJEANE CONSTITUTES A GROSS HUMAN RIGHTS VIOLATION FOR WHICH THE CIVIC STRUCTURES, STUDENT ORGANISATIONS AND THE UDF MUST ACCEPT RESPONSIBILITY. THE COMMISSION FINDS FURTHER THAT THE KILLING OF TWO OTHER COUNCILLORS WAS DIRECTLY ATTRIBUTABLE TO THE ACTIONS OF THE CIVIC STRUCTURES, AND HOLDS THEM AND THE UDF RESPONSIBLE FOR GROSS VIOLATIONS OF HUMAN RIGHTS.

THE COMMISSION FINDS FURTHER THAT THE BURNING OF THE HOMES OF COUNCILLORS, POLICEMEN AND THEIR RELATIVES (AMONGST THEM COUNCILLOR SONNY MOFOKENG, HIS FATHER AND COUNCILLOR NTSOERENG), CONSTITUTES A GROSS HUMAN RIGHTS VIOLATION FOR WHICH THE CIVIC AND STUDENT STRUCTURES AND THE UDF MUST ACCEPT RESPONSIBILITY.

THE COMMISSION FINDS THAT THE BRUTAL KILLING OF COUNCILLOR SAM DHLAMINI BY PROTESTERS BELONGING TO THE CIVIC AND STUDENT STRUCTURES CONSTITUTES A GROSS HUMAN RIGHTS VIOLATION FOR WHICH THE CIVIC AND STUDENT STRUCTURES AND THE UDF MUST ACCEPT RESPONSIBILITY.

Reference 741 - 0.01% Coverage

THE COMMISSION FINDS THAT THE IMPOSITION OF RENT INCREASES BY THE MAMELODI BLACK AUTHORITIES LED TO INTENSE ANGER IN THE TOWNSHIP AND CONTRIBUTED TO THE VIOLENCE WHICH SUBSEQUENTLY TOOK PLACE. THE COMMISSION FINDS FURTHER THAT THE MANNER IN WHICH THE CONFLICT WAS MANAGED, BOTH BY THE LOCAL AUTHORITIES AND THE POLICE, CONTRIBUTED TO AN ESCALATION OF VIOLENCE. THE COMMISSION FINDS THAT THE USE OF EXCESSIVE FORCE AND IMPROPER CROWD CONTROL METHODS BY THE SAP LED TO THE MASSACRE ON 21 NOVEMBER 1985 IN WHICH THIRTEEN PEOPLE DIED AND MANY OTHERS WERE INJURED. THE COMMISSION FINDS THAT THE POLICE ADOPTED A SHOOT-TO-KILL POLICY AND FIRED ON PEOPLE REPEATEDLY AS THEY FLED. THE COMMISSION FINDS THAT NO ATTEMPT WAS MADE TO USE MINIMUM FORCE; INSTEAD, THE POLICE FIRED ROUND UPON ROUND OF LIVE AMMUNITION. THE COMMISSION FINDS CAPTAIN LE ROUX, THE COMMANDER IN CHARGE OF THE POLICE ON THAT DAY, AND MAYOR NDLAZI RESPONSIBLE FOR THE DEATHS AND INJURIES DURING THE MASSACRE ON 21 NOVEMBER 1985. THE COMMISSION FINDS THAT THE MASSACRE CONSTITUTES A GROSS HUMAN RIGHTS VIOLATION AND HOLDS THE COMMISSIONER OF POLICE, THE MINISTER OF LAW AND ORDER, THE MINISTER RESPONSIBLE FOR BLACK LOCAL AUTHORITIES AND THE FORMER STATE RESPONSIBLE FOR GROSS VIOLATIONS OF HUMAN RIGHTS.

Reference 742 - 0.01% Coverage

THE COMMISSION FINDS THAT THE RENT INCREASE IMPOSED ON RESIDENTS IN SOWETO RESULTED IN A RENT AND MUNICIPAL LEVY BOYCOTT BY THE SOWETO CIVIC ASSOCIATION. THE COMMISSION FINDS THAT TWENTY-FOUR PEOPLE WERE KILLED AND HUNDREDS WERE INJURED IN THE 'WHITE CITY WAR' BETWEEN POLICE AND SOWETO RESIDENTS. THE COMMISSION FINDS THAT THE POLICE USED EXCESSIVE FORCE AND IMPROPER CROWD CONTROL METHODS TO QUELL THE PROTESTS. THE COMMISSION FINDS FURTHER THAT THE STATE ATTEMPTED TO STIFLE AND SUPPRESS ALL POLITICAL PROTEST BY IMPOSING RESTRICTIONS ON THE SOWETO CIVIC ASSOCIATION AND DETAINING THE LEADERSHIP. THE COMMISSION FINDS THE COMMISSIONER OF POLICE, THE MINISTER OF LAW AND ORDER AND THE LOCAL COUNCIL RESPONSIBLE FOR GROSS VIOLATIONS OF HUMAN RIGHTS.

Reference 743 - 0.01% Coverage

294 Ms Matilda Mavundla [JB01281/01ERKWA] told the Commission that her fourteenyear-old son, Kenneth, was shot by police on his way home from school in Wattville in August 1984. Teachers had sent students home when they saw police all over the location. THE COMMISSION FINDS THAT THE INITIAL PROTEST ACTION SPILLED OVER INTO STUDENT DISSATISFACTION OVER A NUMBER OF ISSUES, INCLUDING CORPORAL PUNISHMENT AND POOR TEACHING. THIS RESULTED IN STUDENT PROTESTS WHICH LED TO THE CLOSURE OF SCHOOLS. THE COMMISSION FINDS THAT STUDENT PROTESTS WERE

MET WITH VIOLENT POLICE ACTION WHICH RESULTED IN MANY STUDENTS BEING KILLED AND INJURED. THE COMMISSION FINDS THAT THE POLICE USED DEADLY FORCE WHEN ALTERNATIVE METHODS OF RIOT AND CROWD CONTROL WOULD HAVE RESULTED IN LESS DEATHS AND INJURIES. THE COMMISSION FINDS THE COMMISSIONER OF POLICE AND THE MINISTER OF LAW AND ORDER RESPONSIBLE FOR GROSS VIOLATIONS OF HUMAN RIGHTS.

THE COMMISSION FINDS THAT THE STUDENTS ENGAGED IN RETALIATORY ATTACKS ON ALL STRUCTURES AND INDIVIDUALS PERCEIVED TO BE IDENTIFIED WITH THE STATE SUCH AS POLICE OFFICERS, COUNCILLORS, ADMINISTRATION OFFICES, MAYORS, TEACHERS AND SCHOOLS. THE COMMISSION FINDS THAT STUDENTS STONED VEHICLES AND SET FIRE TO DELIVERY VEHICLES AND COUNCILLORS' HOUSES. THE COMMISSION FINDS THAT THE STUDENTS' CONDUCT CREATED A CLIMATE WHICH EXACERBATED THE VIOLENCE, RESULTING IN GROSS HUMAN RIGHTS VIOLATIONS FOR WHICH THE STUDENT ORGANISATIONS OF THE TIME MUST ACCEPT RESPONSIBILITY.

Reference 744 - 0.01% Coverage

299 The funeral and night vigil for Godfrey Mafuya were closely monitored. Ms Mafuya said that soldiers and police hovered around the home and watched as the family buried the boy. THE COMMISSION FINDS THAT NIGHT VIGILS AND FUNERALS BECAME PART OF THE POLITICAL ARENA AND THEREFORE OF THE POLITICAL CONFLICT. FUNERALS AND NIGHT VIGILS WERE OFTEN THE ONLY PLACES WHERE COMMUNITIES COULD GATHER WITHOUT RESTRICTION, BUT THE POLICE THEN BEGAN TO ATTACK PEOPLE WHO GATHERED AT NIGHT VIGILS, RESULTING IN A NUMBER OF DEATHS AND INJURIES. THE COMMISSION FINDS THAT THE POLICE ATTEMPTED TO RESTRICT THE NUMBER OF MOURNERS AT NIGHT VIGILS AND FUNERALS. THEIR HEAVY PRESENCE AT FUNERALS INCITED YOUTHS INTO DIRECT CONFRONTATIONS WITH THEM. THE FUNERAL FEAST FOR MOURNERS REPRESENTED ONE OF THE MOST IMPORTANT SYMBOLIC WAYS OF DEALING WITH THE COUNTLESS DEATHS THAT TOOK PLACE. IN THE TESTIMONY HEARD BY THE COMMISSION, ONE OF THE MOST COMMON REFRAINS BY MOTHERS WAS THAT THE POLICE KICKED AND SCATTERED THE FOOD MEANT FOR THE MOURNERS. THE COMMISSION FINDS THAT THE POLICE WERE RESPONSIBLE IN THIS INSTANCE FOR CREATING A CLIMATE CONDUCIVE TO GROSS HUMAN RIGHTS VIOLATIONS, AND FINDS THE COMMISSIONER OF POLICE AND THE MINISTER OF LAW AND ORDER RESPONSIBLE FOR THESE GROSS HUMAN RIGHTS VIOLATIONS.

Reference 745 - 0.01% Coverage

THE COMMISSION FINDS THAT THE FUNERAL OF MR MICHAEL DIRADING WAS PEACEFUL UNTIL THE POLICE FIRED TEAR GAS AT THE 11 000 MOURNERS ATTENDING THE FUNERAL. THE COMMISSION FINDS THAT THE ATTACK BY THE POLICE ON UNARMED MOURNERS LED TO VIOLENT CLASHES BETWEEN THEMSELVES AND ALEXANDRA RESIDENTS, IN WHICH THIRTY PEOPLE WERE KILLED AND MANY OTHERS WERE INJURED. THE COMMISSION FINDS THAT THE POLICE ACTED IN A DELIBERATELY PROVOCATIVE MANNER BY SHOOTING AT PEOPLE WITHOUT ANY PROVOCATION. THE COMMISSION FINDS THAT THE POLICE PREVENTED THE INJURED FROM RECEIVING MEDICAL TREATMENT, WHICH LED TO FURTHER DEATHS. THE COMMISSION FINDS THE SAP, THE COMMISSIONER OF POLICE, THE MINISTER OF LAW AND ORDER, THE SADF AND THE MINISTER OF DEFENCE RESPONSIBLE FOR GROSS VIOLATIONS OF HUMAN RIGHTS THAT OCCURRED IN ALEXANDER IN FEBRUARY 1986 IN WHAT IS COMMONLY REFERRED TO AS THE SIX DAY WAR.

THE COMMISSION FINDS THAT DURING THE 'SIX DAY WAR', STATE EMPLOYEES SUCH AS POLICE OFFICERS, AND OTHERS PERCEIVED TO BE REPRESENTATIVES OF THE STATE, WERE ATTACKED AND KILLED. ONE OF THESE WAS POLICE OFFICER SAMUEL MASHILE, WHO WAS BURNED TO DEATH BY

UNKNOWN ALEXANDRA RESIDENTS. THE COMMISSION FINDS THESE RESIDENTS RESPONSIBLE FOR GROSS VIOLATIONS OF HUMAN RIGHTS.

Reference 746 - 0.01% Coverage

315 The Commission's data for the former Transvaal reflects a peak in the incidence of torture during this period (1983–89) with approximately 1 500 torture violations recorded, constituting 20 per cent of all gross human rights violations recorded during this period. Nearly a third of these acts of torture occurred in the second quarter of 1986, after the declaration of a national state of emergency. This is the highest peak of torture in the former Transvaal during the Commission's mandate period.

Reference 747 - 0.01% Coverage

323 Mr Spankie Lesotho [JB02167/03WR], a founder member of the Azanian Students' Movement (AZASM), from Khutsong at Carletonville in the Western Transvaal, testified to the Human Rights Violations Committee of his experience as an emergency detainee. As a member of AZASM, he organised protests against corporal punishment and other educational grievances. Some of these protests were violent and involved the burning of school buildings, administrative offices and shops. He was repeatedly detained from 1985 onwards and then served a sixmonth sentence for public violence. On his release in 1986 he was detained again. He told the Commission that he was held for three weeks, and tortured. He was forced to frog-jump, his head was hit against a wall and his hair was torn out. A complaint to a prosecutor that he had been tortured merely elicited further abuse.

Reference 748 - 0.01% Coverage

THE COMMISSION FINDS THAT MR LESOTHO WAS ARRESTED IN THE CARLETONVILLE AREA AND DETAINED FOR LONG PERIODS DURING WHICH HE WAS SEVERELY BEATEN AND SUBJECTED TO REPEATED ELECTRIC SHOCK TORTURE. THE COMMISSION FINDS THAT MR MOPELOA WAS ARRESTED IN JUNE 1987 BY THE SAP AND SUBJECTED TO SEVERE BEATINGS AND TORTURE. THE COMMISSION FINDS THAT MR NKOSI WAS DETAINED AND TORTURED WITH ELECTRIC SHOCKS BY THE SAME SPECIAL BRANCH MEMBERS WHO DETAINED AND TORTURED MR BOPAPE. THE COMMISSION FINDS THAT THE TORTURE CONSTITUTES A GROSS HUMAN RIGHTS VIOLATION FOR WHICH THE THEN HEAD OF THE SPECIAL BRANCH, THE COMMISSIONER OF POLICE AND THE MINISTER OF LAW AND ORDER MUST TAKE RESPONSIBILITY .

Reference 749 - 0.01% Coverage

SECURITY BRANCH, AND CAPTAIN VAN LOGGERENBERG. THE COMMISSION FINDS THE DISAPPEARANCE, TORTURE AND DEATH OF BOPAPE TO CONSTITUTE A GROSS VIOLATION OF HUMAN RIGHTS AND FINDS THE POLICEMEN AND THE MINISTER OF LAW AT THE TIME RESPONSIBLE FOR GROSS VIOLATIONS OF HUMAN RIGHTS. THE POLICEMEN HAVE APPLIED FOR AMNESTY.

Reference 750 - 0.01% Coverage

349 In 1993, former policeman Mr George Mbathu, who had detained Thlapi and the other activists, gave Lawyers for Human Rights a sworn statement alleging that Warrant Officer Viljoen, Sergeant Makiti and Constables Tseladimitlwa, Tshwaedi, Majaja and Mano had been involved in the arrest. He also alleged

that Thlapi was dead and that his body had been dumped down a mine shaft. Later he pointed out an old disused mine shaft just outside Stilfontein.

350 On 29 December 1993, Lawyers for Human Rights, the Independent Board of Inquiry (IBI) and members of the SAP accompanied the Thlapi family to the mine, where a camera was lowered down the shaft and the family watched the camera's progress on a monitor. A number of shadows appeared on the screen, but there was no conclusive proof that Thlapi's body had been dumped there. In the light of what he had seen, Mr Abbey Dlavane of Lawyers for Human Rights felt that further investigation of the site was warranted. The police investigation into Thlapi's disappearance continues. Two of the policemen mentioned by Mbathu have been charged with serious assault against other detainees at the Welverdiend police station in Carletonville.

Reference 751 - 0.01% Coverage

362 Four section 29 subpoena hearings were conducted with respect to the incident and several sworn affidavits were collected. A report on the Commission's investigations into the disappearance of George Shabangu has been forwarded to the Attorney-General for consideration. THE COMMISSION FINDS THAT MR RAMATUA NICHOLAS THLAPI WAS LAST SEEN IN THE CUSTODY OF THE POLICE BASED AT JOUBERTON POLICE STATION IN 1986. THE COMMISSION FINDS THAT HE WAS ASSAULTED AND TORTURED BY WARRANT OFFICER VILJOEN, SERGEANT MAKITI AND CONSTABLES TSELADIMITLWA, TSHWAEDI, MAJAJA AND MANO OF THE JOUBERTON SECURITY BRANCH. THE COMMISSION FINDS THE JOUBERTON SECURITY BRANCH RESPONSIBLE FOR MR THLAPI'S DISAPPEARANCE, AND FINDS THAT IN ALL PROBABILITY HE WAS KILLED BY THE JOUBERTON POLICE IN WHOSE CUSTODY HE WAS LAST SEEN. THLAPI'S DISAPPEARANCE AND DEATH CONSTITUTE GROSS HUMAN RIGHTS VIOLATION FOR WHICH THE COMMISSION HOLDS THE COMMISSIONER OF POLICE, THE HEAD OF THE SECURITY BRANCH AND THE MINISTER OF LAW AND ORDER RESPONSIBLE.

Reference 752 - 0.01% Coverage

THE COMMISSION FINDS IT UNLIKELY THAT THE POLICE WOULD HAVE CONDUCTED A NIGHT-TIME SEARCH FOR AN ARMS CACHE WITH A SUSPECT THEY CONSIDERED DANGEROUS – AND WITHOUT TAKING SHOVELS OR TORCHES. THE COMMISSION REJECTS THE ASSERTION BY THE KWANDEBELE POLICE THAT MR GEORGE SHABANGU ESCAPED WHILE POINTING OUT AN ARMS CACHE. THE COMMISSION HOLDS THE KWANDEBELE POLICE RESPONSIBLE FOR THE DISAPPEARANCE OF MR SHABANGU ON 6 FEBRUARY 1987 AND FINDS THAT IN ALL PROBABILITY HE WAS KILLED BY THE KWANDEBELE POLICE, IN WHOSE CUSTODY HE WAS LAST SEEN. THE COMMISSION FINDS THE DISAPPEARANCE AND DEATH OF MR SHABANGU TO CONSTITUTE A GROSS VIOLATION OF HUMAN RIGHTS, FOR WHICH THE HEAD OF THE KWANDEBELE POLICE MUST ACCEPT RESPONSIBILITY.

Reference 753 - 0.01% Coverage

365 One of the victims remains unidentified to this day, another is simply referred to as 'Castro', the third is identified in a statement as Mr Ncebe Cassius Snuma [JB01654/01GTSOW]. Mr Cindi Snuma reports that Ncebe, a UDF activist, disappeared mysteriously after leaving home on 18 July 1989. In September 1996, police at Braamfontein gave Mr Sandile Snuma some photographs by which he was to identify his brother Ncebe's body. Sandile was allegedly instructed not to contact the media or the Commission as two suspended policemen had been involved in Ncebe's death and any outside interference might jeopardise the investigation. According to the police, Ncebe was killed when a bomb given to him by an ANC member exploded in his possession. THE COMMISSION FINDS THAT THE SOWETO SECURITY BRANCH

USED EXTRA-JUDICIAL METHODS TO KILL ACTIVISTS, INCLUDING MR NCEBE CASSIUS SNUMA, ONE 'CASTRO' AND AN UNIDENTIFIED YOUTH. THE COMMISSION FINDS THAT THESE EXTRA-JUDICIAL KILLINGS CONSTITUTE GROSS HUMAN RIGHTS VIOLATIONS FOR WHICH THE SAP, THE SADF AND VLAKPLAAS MUST ACCEPT RESPONSIBILITY. THE COMMISSION FINDS THE COMMISSIONER OF POLICE, THE MINISTER OF LAW AND ORDER, THE HEAD OF THE SADF AND THE MINISTER OF DEFENCE RESPONSIBLE FOR GROSS VIOLATIONS OF HUMAN RIGHTS.

366 Important new information about the booby-trapped hand grenades has emerged both through the testimony of victims to the Human Rights Violations Committee

Reference 754 - 0.01% Coverage

375 Residents believed a police informant was behind the deaths of the students. At the first funeral, Archbishop Desmond Tutu saved a suspected informer from being necklaced. But at the second funeral, the fury of Duduza was unleashed on Ms Maki Skhosana [JB00289/01ERKWA], suspected of being an informer because of her relationship with one 'Mike', who was in fact Vlakplaas operative Joe Mamasela posing as an MK operative (see under Necklacing, below). Soon after Skhosana's necklacing, State President PW Botha declared a state of emergency on 20 July 1985 affecting thirty-six magisterial districts. THE COMMISSION FINDS THAT EIGHT PEOPLE WERE KILLED AND SEVEN SERIOUSLY INJURED IN SEPARATE HAND GRENADE AND LIMPET MINE BLASTS ON 25 JUNE 1985. THE COMMISSION FINDS THE FOLLOWING INDIVIDUALS RESPONSIBLE FOR SUPPLYING EAST RAND ACTIVISTS WITH BOOBY-TRAPPED HAND GRENADES AND LIMPET MINES, RESULTING IN GROSS HUMAN RIGHTS VIOLATIONS: FORMER VLAKPLAAS HEAD WILLEM SCHOON; FORMER SPECIAL FORCES OFFICER, MAJOR GENERAL JOEP JOUBERT; FORMER COMMISSIONER OF POLICE, GENERAL JOHAN VAN DER MERWE; BRIGADIER CRONJÉ; FORMER VLAKPLAAS COMMANDER, EUGENE DE KOCK; VLAKPLAAS ASKARIS DANIEL NKALA AND JOE MAMASELA, AND SPECIAL BRANCH MEMBERS ROELOF VENTER, MARTHINUS DELPORT AND FRANCOIS STEENKAMP. THE COMMISSION FINDS THE FORMER MINISTERS OF DEFENCE AND OF LAW AND ORDER RESPONSIBLE FOR THE ACTIONS OF THEIR OPERATIVES.

Reference 755 - 0.01% Coverage

ADMITTED AMBUSHING AND KILLING SUCH ACTIVISTS. THE COMMISSION FINDS THAT ON 10 JULY 1987, SIX ANC MEMBERS WERE AMBUSHED AT ALLDAYS AND SHOT DEAD BY POLICE. THE COMMISSION FINDS THAT THE KILLING CONSTITUTES GROSS HUMAN RIGHTS VIOLATIONS FOR WHICH THE MINISTER OF LAW AND ORDER, THE COMMISSIONER OF POLICE AND THE FORMER STATE MUST ACCEPT RESPONSIBILITY.

THE COMMISSION FINDS, AS A RESULT OF EXHUMATIONS, THAT A NUMBER OF CADRES WERE TORTURED AND KILLED AFTER HAVING BEEN ABDUCTED. EXHUMATIONS HAVE REVEALED THAT SUCH CADRES WERE SHOT DEAD WITHOUT ANY ATTEMPT TO DEAL WITH THEM IN A JUDICIAL MANNER. THE COMMISSION FINDS THAT LOWER-RANKING OPERATIVES, NOTING THE STATE SECURITY COUNCIL'S USE OF COUNTER-INSURGENCY STRATEGIES AGAINST THOSE IT CONSIDERED A THREAT, INTERPRETED THIS TO MEAN THAT SUCH CADRES SHOULD BE KILLED. THE COMMISSION FINDS THE MINISTER OF LAW AND ORDER, THE MINISTER OF DEFENCE AND THE HEAD OF THE STATE SECURITY COUNCIL RESPONSIBLE FOR GROSS HUMAN RIGHTS VIOLATIONS.

Reference 756 - 0.01% Coverage

THE COMMISSION FINDS THAT THE KILLING OF MR CAIPHUS NYOKA BY MEMBERS OF THE BENONI SECURITY BRANCH CONSTITUTES A GROSS VIOLATION OF HUMAN RIGHTS, AND HOLDS THE MINISTER OF LAW AND ORDER, THE COMMISSIONER OF POLICE AND THE HEAD OF THE

Reference 757 - 0.01% Coverage

FORMER STATE RESPONSIBLE. THE COMMISSION FINDS THAT THE TORTURE OF THE THREE MEN NAMED ABOVE CONSTITUTES A GROSS VIOLATION OF HUMAN RIGHTS, AND HOLDS THE BENONI SECURITY BRANCH, THE COMMISSIONER OF POLICE AND THE MINISTER OF LAW AND ORDER RESPONSIBLE.

Reference 758 - 0.01% Coverage

395 In Venda, gross human rights violations took place in two major contexts. The most significant of these was the conflict between the homeland government and emerging civic, youth and other UDF-affiliated structures which protested against the homeland administration. The second was the conflict between homeland security forces and ANC insurgents crossing the borders from neighbouring countries through the homelands.

Reference 759 - 0.01% Coverage

THE COMMISSION FINDS THAT THE VENDA POLICE AND THE VENDA DEFENCE FORCE WERE RESPONSIBLE FOR THE TORTURE AND SEVERE ILL TREATMENT OF STUDENTS, CHURCH AND COMMUNITY LEADERS. THE COMMISSION FINDS THAT THE TORTURE AND SEVERE ILL TREATMENT CONSTITUTES A GROSS HUMAN RIGHTS VIOLATION FOR WHICH THE VENDA GOVERNMENT IS HELD RESPONSIBLE.

Reference 760 - 0.01% Coverage

THE COMMISSION FINDS THAT COLONEL MOLOPE INCITED AND ENRAGED THE CROWD WITH HIS THREATS AND THEN UNLEASHED VIOLENCE ON THEM WHICH WAS EXCESSIVE IN THE CIRCUMSTANCES. THE COMMISSION FINDS COLONEL MOLOPE AND THE BOPHUTHATSWANA SECURITY FORCES RESPONSIBLE FOR THE WINTERVELD MASSACRE. THE COMMISSION FINDS COLONEL MOLOPE, THE BOPHUTHATSWANA SECURITY FORCES AND THE BOPHUTHATSWANA GOVERNMENT RESPONSIBLE FOR THE GROSS VIOLATION OF HUMAN RIGHTS.

THE COMMISSION FINDS THAT THE COMMUNITY, AND PARTICULARLY ACTIVISTS IN THE AREA, WERE ENRAGED BY THE ACTIONS OF COLONEL MOLOPE. THIS LED TO HIS ASSASSINATION ON 21 JUNE 1986. WHILST BOTH THE ANC AND THE PAC CLAIMED RESPONSIBILITY FOR HIS DEATH, THE COMMISSION IS UNABLE TO DETERMINE WHICH OF THE LIBERATION MOVEMENTS SHOULD BEAR RESPONSIBILITY. THE COMMISSION FINDS, HOWEVER, THAT HIS ASSASSINATION CANNOT BE CONDONED AND FINDS THE ACTIVISTS IN THE WINTERVELD AREA RESPONSIBLE FOR GROSS VIOLATIONS OF HUMAN RIGHTS.

Reference 761 - 0.01% Coverage

THE COMMISSION FINDS THAT FIVE PEOPLE WERE KILLED AND ONE PERSON WAS INJURED DURING THE COUP ON 10 FEBRUARY 1988 BY MR ROCKY MALEBANE-METSING AND THE COUNTER-COUP FIFTEEN HOURS LATER BY PRESIDENT MANGOPE WITH THE ASSISTANCE OF THE SOUTH AFRICAN GOVERNMENT. THE COMMISSION FINDS MR ROCKY MALEBANE-METSING, PRESIDENT MANGOPE AND

THEIR RESPECTIVE SUPPORTERS, AS WELL AS THE SECURITY FORCES OF THE SOUTH AFRICAN GOVERNMENT, RESPONSIBLE FOR GROSS VIOLATIONS OF HUMAN RIGHTS. THE COMMISSION FINDS THAT 423 PEOPLE WERE DETAINED AND TORTURED BY THE SECURITY FORCES OF THE MANGOPE GOVERNMENT IN THE AFTERMATH OF THE COUP. THE COMMISSION FINDS THAT THE TORTURE CONSTITUTES A GROSS VIOLATION OF HUMAN RIGHTS, FOR WHICH THE BOPHUTHATSWANA GOVERNMENT AND PRESIDENT LUCAS MANGOPE MUST ACCEPT RESPONSIBILITY.

Reference 762 - 0.01% Coverage

THE COMMISSION FINDS THAT THIS POLICY OF THE BOPHUTHATSWANA GOVERNMENT CREATED A CLIMATE CONDUCIVE TO CONFLICT AND GROSS HUMAN RIGHTS VIOLATIONS OCCURRED.

Reference 763 - 0.01% Coverage

In Seshego specifically and other areas surrounding it, there were human rights abuses in those areas. I can give an example, we were not allowed to hold any meeting ... every time we wanted to hold meetings whether for the workers or the people, we were attacked in different ways. We were attacked in churches, they threw tear gas canisters ... The other things which were disturbing were, they used to kidnap people in Seshego, they used to assault and do bad things to them, some of them now are paralysed, some of them have been buried, we just buried them before this Commission started ...

Reference 764 - 0.01% Coverage

THE COMMISSION FINDS THAT THE LEBOWA GOVERNMENT AND ITS SECURITY FORCES WERE RESPONSIBLE FOR THE ARREST, TORTURE AND DEATH OF MR PETER NCHABALENG IN APRIL 1986 AND THE ARREST, TORTURE AND DEATH OF MR MAKOMPO LUCKY KUTUMELA IN MARCH 1986. THE COMMISSION FINDS THAT MR YASSER PHOKELA RASETHABA WAS DETAINED BY THE LEBOWA SECURITY FORCES IN 1986 AND WAS SEVERELY ASSAULTED BY THEM. THE COMMISSION FINDS THE LEBOWA GOVERNMENT AND ITS SECURITY FORCES RESPONSIBLE FOR THE GROSS VIOLATION OF HUMAN RIGHTS.

Reference 765 - 0.01% Coverage

ER WITH A FELLOW ACTIVIST, MR ROBERT MAKOGA. THEY WERE BOTH SEVERELY ASSAULTED BY THE LEBOWA POLICE AND MR RAMALEPE WAS KILLED. THE COMMISSION FINDS THE LEBOWA GOVERNMENT AND ITS SECURITY FORCES RESPONSIBLE FOR THE GROSS VIOLATION OF HUMAN RIGHTS IN RESPECT OF MR RAMALEPE AND MR MAKOGA.

Reference 766 - 0.01% Coverage

BY THE DRIEFONTEIN COUNCIL BOARD OF DIRECTION TO PROTEST REMOVAL FROM DRIEFONTEIN. THE COMMISSION FINDS THAT THE KILLING OF MR MKHIZE CONSTITUTES A GROSS HUMAN RIGHTS VIOLATION FOR WHICH THE POLICE, THE MINISTER OF LAW AND ORDER AND THE FORMER STATE MUST ACCEPT RESPONSIBILITY.

Reference 767 - 0.01% Coverage

a long-term community activist who had fought against the removal of residents from Tshikota township to Vleifontein and was now a member of the VCC opposing the incorporation of the township into Venda. Phulwana was briefly detained before being released and re-detained on 15 June. After being beaten at Vuwani and Sibasa police stations, Phulwana was taken to Masise, where he was held for three months in solitary confinement. He was tortured with electric shocks and beaten. Convinced that the food he was being given was poisoned, he refused food and water, and was eventually admitted to the Trizine hospital. THE COMMISSION FINDS THAT A NUMBER OF PEOPLE WERE SEVERELY BEATEN AND ILL TREATED IN THE CONFLICT BETWEEN THE BOPHUTHATSWANA POLICE AND THE RESIDENTS OF BRAKLAAGTE, WHO WERE RESISTING INCORPORATION INTO THE HOMELAND. THE COMMISSION FINDS THE BOPHUTHATSWANA POLICE AND THE BOPHUTHATSWANA GOVERNMENT RESPONSIBLE FOR THE SEVERE ILL TREATMENT OF THE BRAKLAAGTE RESIDENTS AND FOR GROSS VIOLATIONS OF HUMAN RIGHTS.

THE COMMISSION FINDS THAT THE POLICE REFUSED TO ALLOW A JULY 1989 MEETING OF BRAKLAAGTE AND LEEUWFontein residents to go ahead, and fired on the crowd with tear gas and rubber bullets. THE COMMISSION FINDS THE BRAKLAAGTE AND LEEUWFontein community responsible for the subsequent killing of nine policemen at the scene, and thereby responsible for the gross violation of human rights.

THE COMMISSION FINDS THAT THE VENDA SECURITY FORCES OCCUPIED THE VLEIFontein township and arrested, detained and tortured activists and members of the VLEIFontein crisis committee who resisted the township's incorporation into Venda. THE COMMISSION FINDS THAT THE DETENTION OF A FOURTEEN-YEAR-OLD BETHUEL MUDAU FOR A PERIOD OF THREE MONTHS AND HIS SEVERE ILL TREATMENT BY THE VENDA POLICE RESULTED IN HIS DEATH SHORTLY AFTER HIS RELEASE. THE COMMISSION FINDS THE VENDA SECURITY FORCES RESPONSIBLE FOR THE GROSS VIOLATION OF HUMAN RIGHTS.

Reference 768 - 0.01% Coverage

461 The political conflict over independence and incorporation which engulfed the KwaNdebele area from mid-1985 until 1988 became, in effect, a civil war. Human rights violations – committed by a variety of individuals and groups on all sides of the conflict – were numerous and widespread. Scores of people were killed, not only by the security forces deployed to repress the unrest, but also by erstwhile neighbours, fellow students, business colleagues, and even family members. KwaNdebele's limited infrastructure was razed to the ground in a matter of months. Schools stood empty, shops and offices were gutted and entire communities lived in fear. By the winter of 1986, KwaNdebele had been irrevocably changed.

Reference 769 - 0.01% Coverage

477 A number of security force operatives have applied for amnesty for participation in or knowledge of the operation. These include: Brigadier Jack Cronjé (former divisional commander of the Northern Transvaal Security Branch); his subordinates Captain Jacques Hechter and Captain Jacob van Jaarsveld; Captain Chris Kendall (Security Branch commander at Bronkhorstspuit); General Joep Joubert (Commander General of SADF Special Forces); Sergeant Deon Gouws and Warrant Officer Stephanus A Oosthuizen (both of the SAP uniform branch). THE COMMISSION FINDS THAT IMBOKODO ABDUCTED 360 MOUTSE RESIDENTS AND HUMILIATED AND TORTURED THEM AT A COMMUNITY HALL IN SIYASBUSWA. THE COMMISSION FINDS THAT THE TORTURE AND ASSAULT OF THE MOUTSE RESIDENTS CONSTITUTE A GROSS VIOLATION OF HUMAN RIGHTS FOR WHICH IMBOKODO, KWANDEBELE CHIEF MINISTER SS SKOSANA AND VIGILANTE LEADER PIET NTULI (DECEASED) ARE HELD RESPONSIBLE. THE

COMMISSION FINDS THAT ON 28 APRIL 1986, IMBOKODO ABDUCTED YOUTH FROM THEIR HOMES IN VLAKLAAGTE NO. 1 AND ASSAULTED THEM AT EMAGAZINI IN KWAGGAFONTEIN. THE COMMISSION FINDS THAT THE ASSAULTS ON THE YOUTHS CONSTITUTE GROSS VIOLATIONS OF HUMAN RIGHTS, FOR WHICH IMBOKODO, CHIEF MINISTER SS SKOSANA AND MR PIET NTULI ARE HELD RESPONSIBLE.

Reference 770 - 0.01% Coverage

THE COMMISSION FINDS THAT THE SOUTH AFRICAN SECURITY FORCES ASSASSINATED MR PIET NTULI, THE LEADER OF IMBOKODO, ON 29 JULY 1986. THE COMMISSION FINDS BRIGADIER JACK CRONJÉ, CAPTAIN JACQUES HECHTER, CAPTAIN JACOB VAN JAARSVELD, CAPTAIN CHRIS KENDALL, GENERAL JOEP JOUBERT, SERGEANT DEON GOUS AND WARRANT OFFICER STEPHANUS OOSTHUIZEN, THE COMMISSIONER OF POLICE, THE MINISTERS OF DEFENCE AND OF LAW AND ORDER, THE HEAD OF THE SADF AND THE FORMER STATE RESPONSIBLE FOR THE DEATH OF MR NTULI, AND THUS FOR THE GROSS VIOLATION OF HUMAN RIGHTS.

Reference 771 - 0.01% Coverage

THE COMMISSION FINDS THAT THE LEANDRA POLICE KILLED MS NELLY MADONSELA, MR AUBREY MOKOENA, MR THOMAS MASOMBUKA AND MS ROSE KHUMALO DURING A STAY AWAY, AND FINDS THE LEANDRA POLICE RESPONSIBLE FOR GROSS VIOLATIONS OF HUMAN RIGHTS. THE COMMISSION FINDS THAT THE CONFLICT AROUND INCORPORATION GAVE RISE TO THE FORMATION OF A VIGILANTE GROUP IN LEANDRA CALLING ITSELF 'INKATHA'. THE COMMISSION FINDS INKATHA RESPONSIBLE FOR THE KILLING OF CHIEF AMPIE MAYISE, THE BURNING OF HIS HOUSE AND THE ATTEMPTED KILLING OF MEMBERS OF HIS FAMILY. IN PARTICULAR, THE COMMISSION FINDS INKATHA VIGILANTE GANG MEMBERS SIPHO GADEBE AND MABOY ZONDO RESPONSIBLE FOR THE ATTACK ON CHIEF MAYISE. THE COMMISSION FINDS INKATHA MEMBERS SAM AND JOSEPH ZONDO RESPONSIBLE FOR THE ATTEMPTED KILLING OF LAC LEADER MR ABEL NKABINDE AND THE ARSON ATTACK ON HIS HOME. THE COMMISSION FINDS INKATHA RESPONSIBLE FOR THE ASSAULT AND ATTEMPTED KILLING OF MR JAN NKABINDE, A NEPHEW OF MR ABEL NKABINDE, AND HOLDS THE INKATHA VIGILANTE GROUP RESPONSIBLE FOR GROSS VIOLATIONS OF HUMAN RIGHTS.

Reference 772 - 0.01% Coverage

THE COMMISSION FINDS THAT THOUSANDS OF STUDENTS GATHERED PEACEFULLY ON 11 MARCH 1986 TO SUPPORT TWENTY-SIX STUDENTS WHO WERE DETAINED AND CHARGED WITH PUBLIC VIOLENCE. THE COMMISSION FINDS THAT THE KANGWANE POLICE ATTACKED THEM WITHOUT PROVOCATION AND WITHOUT GIVING THEM ANY WARNING TO DISPERSE, FIRED REPEATED ROUNDS OF LIVE AMMUNITION INTO THE UNARMED CROWD. THREE STUDENTS WERE KILLED AND EIGHTY WERE SERIOUSLY INJURED, MOST BEING WOUNDED IN THE BACK. THE COMMISSION FINDS THE KANGWANE POLICE RESPONSIBLE FOR THE KILLING AND SEVERE ILL TREATMENT OF THE STUDENTS, AND THUS FOR THE GROSS VIOLATION OF HUMAN RIGHTS. THE COMMISSION FINDS THE MINISTER OF LAW AND ORDER AND THE CHIEF MINISTER OF KANGWANE RESPONSIBLE FOR GROSS VIOLATIONS OF HUMAN RIGHTS.

Reference 773 - 0.01% Coverage

497 As the conflict deepened and escalated during the mid 1980s, gross human rights violations became increasingly generalised, drawing in an ever-widening range of sectors, organisations and individuals as

perpetrators. The ANC, MK and individuals associated with the UDF were identified as perpetrators during this period.

Reference 774 - 0.01% Coverage

THE COMMISSION FINDS MR MTHETHELELI MNCUBE AND MR MZONDELI NONDULA RESPONSIBLE FOR PLANTING THE LANDMINES THAT KILLED MEMBERS OF THE VAN ECK AND DE NYSSCHEN FAMILIES. THE COMMISSION FINDS THAT THREE WOMEN AND FOUR CHILDREN WERE KILLED AND THE REMAINING MEMBERS WERE INJURED. THE COMMISSION FINDS MK AND THE ANC RESPONSIBLE FOR THE GROSS VIOLATION OF HUMAN RIGHTS.

THE COMMISSION FINDS THAT MK PLANTED LANDMINES RESULTING IN THE DEATH OF MS LINDIWE MDLULI AND HER EIGHT-MONTH-OLD BABY. THE COMMISSION FINDS MK AND THE ANC RESPONSIBLE FOR THESE GROSS VIOLATIONS OF HUMAN RIGHTS.

THE COMMISSION FINDS THAT MR JOHANNES ROOS LOST HIS WIFE AND THEIR SON IN A LANDMINE EXPLOSION FOR WHICH MK WERE RESPONSIBLE. THE COMMISSION FINDS MK AND THE ANC RESPONSIBLE FOR THE GROSS VIOLATION OF HUMAN RIGHTS.

Reference 775 - 0.01% Coverage

AND MS MARINA GELDENHUYS. THE COMMISSION FINDS MK, THE ANC AND THE INDIVIDUALS LISTED ABOVE RESPONSIBLE FOR THE GROSS VIOLATION OF HUMAN RIGHTS.

Reference 776 - 0.01% Coverage

two arson attacks in 1981 and 1986. According to Mr Mahavle, both incidents resulted from mistaken identity. In the first case he allegedly resembled a policeman who had detained ANC members, and in the second he was mistaken for a policeman who had shot a young boy during a stay away in 1986. Mahavle told the Commission that in spite of being targeted because of his role as a policeman, he also faced suspicion from his white colleagues who suspected that he had sympathies with the forces for liberation. THE COMMISSION FINDS THE 'COMRADES' RESPONSIBLE FOR THE ATTEMPTED KILLING OF MS MAHAVLE, THE WIFE OF POLICE OFFICER MAYEZA PETER MAHAVLE, AND THE ARSON ATTACK ON THEIR HOME, IN 1981. THE COMMISSION FINDS THE UDF AND THE ANC RESPONSIBLE FOR GROSS VIOLATIONS OF HUMAN RIGHTS.

Reference 777 - 0.01% Coverage

unaware of Mamasela's position within the police, was involved in a relationship with him. Survivors of the attack still seem divided as to whether Skhosana had in fact betrayed them. However, after her sister, Ms Evelina Puleng Moloko, testified at the Commission hearings, the family was formally accepted back into the East Rand community in a significant symbolic process of reconciliation. THE COMMISSION FINDS THAT MS MAKI SKHOSANA WAS WRONGLY ACCUSED OF BEING AN INFORMER AND RESPONSIBLE FOR THE DEATH OF THE 'COMRADES' IN THE BOOBY-TRAPPED HAND GRENADE INCIDENTS. THE COMMISSION FINDS THAT MS SKHOSANA WAS NOT AWARE OF THE FACT THAT 'MIKE' WAS JOE MAMASELA, AN ASKARI. THE COMMISSION FINDS THAT THE NECKLACING WAS A GRUESOME ACT OF EXTRAORDINARY VIOLENCE THAT CAST A BLIGHT ON THE STRUGGLE FOR FREEDOM. THE COMMISSION FINDS THE 'COMRADES' AND THE COMMUNITY AT DUDUZA RESPONSIBLE FOR THE NECKLACING OF MS SKHOSANA, AND THAT THE UDF AND THE ANC MUST ACCEPT RESPONSIBILITY FOR THIS GROSS VIOLATION OF HUMAN RIGHTS.

THE COMMISSION FINDS THAT THE ROLE PLAYED BY THE STATE IN MANIPULATING COMMUNITY PARANOIA AND INFILTRATING INFORMERS INTO COMMUNITIES AND ACTIVIST STRUCTURES CREATED A CLIMATE WHICH GAVE RISE TO VIOLENCE AND GROSS VIOLATIONS OF HUMAN RIGHTS.

Reference 778 - 0.01% Coverage

THE COMMISSION FINDS THAT THE 'COMRADES' WERE RESPONSIBLE FOR THE FATAL BURNING OF MR FRANK MLOTSHWA. THE COMMISSION FINDS THE 'COMRADES', THE UDF AND THE ANC RESPONSIBLE FOR HIS DEATH AND THUS FOR THE GROSS VIOLATION OF HUMAN RIGHTS.

Reference 779 - 0.01% Coverage

ROLE PLAYED BY THE STATE IN COMPROMISING MANY ACTIVISTS AND COERCING THEM INTO BECOMING INFORMERS AND ASKARIS RESULTED IN THE MURDERS OF MANY ACTIVISTS AND COMMUNITY MEMBERS. THE COMMISSION FINDS THE FORMER SOUTH AFRICAN GOVERNMENT RESPONSIBLE FOR CREATING A CLIMATE WITHIN WHICH GROSS HUMAN RIGHTS VIOLATIONS WERE COMMITTED. THE COMMISSION FINDS THE 'COMRADES', THE COMMUNITY, THE UDF AND THE ANC RESPONSIBLE FOR THE GROSS VIOLATION OF HUMAN RIGHTS.

Reference 780 - 0.01% Coverage

THE COMMISSION FINDS THAT ONE OF THE LEGACIES OF APARTHEID WAS THE POLITICAL DIVISION THAT EXISTED IN COMMUNITIES BETWEEN THE CHARTERISTS AND THE ADHERENTS OF THE BLACK CONSCIOUSNESS MOVEMENT. WHILST RECOGNISING THE ROLE THAT THE STATE PLAYED IN EXPLOITING THE DIVISIONS IN COMMUNITIES, THE COMMISSION FINDS NEVERTHELESS THAT THE STUDENT FORMATIONS OF THE UDF AND AZAPO, NAMELY COSAS AND AZASM, WERE ENGAGED IN BATTLES FOR IDEOLOGICAL SUPREMACY AT COMMUNITY LEVEL. THE BATTLES WERE BLOODY AND RESULTED IN A NUMBER OF DEATHS AND INJURIES, ALONG WITH A NUMBER OF HOMES BEING BURNT. THE COMMISSION FINDS THAT THE POLITICAL INTOLERANCE BETWEEN RIVAL POLITICAL GROUPINGS RESULTED IN THE GROSS VIOLATION OF HUMAN RIGHTS, FOR WHICH THE UDF AND AZAPO ARE FOUND TO BE RESPONSIBLE.

Reference 781 - 0.01% Coverage

Percent of human rights violations in the former Transvaal – 1990–94

Reference 782 - 0.01% Coverage

- THAT THE KHESWA GANG, THE IFP AND THE POLICE MUST ACCEPT RESPONSIBILITY FOR THE COMMISSION OF GROSS HUMAN RIGHTS VIOLATIONS.

Reference 783 - 0.01% Coverage

INJURY OF TWENTY-TWO OTHERS. THE COMMISSION FINDS THE COMMISSIONER OF POLICE, THE MINISTER OF LAW AND ORDER AND THE IFP RESPONSIBLE FOR THE COMMISSION OF GROSS HUMAN RIGHTS VIOLATIONS.

Reference 784 - 0.01% Coverage

609 Ms Kate Martha Maphanga-Mkhwanazi [JB01884/01GTTEM], sister of the woman for whom the night vigil was being held, told the Commission that the attackers were clad in police uniform and were also wearing balaclavas. THE COMMISSION FINDS THAT, WHILST ALEXANDRA WAS RELATIVELY PEACEFUL COMPARED TO OTHER AREAS ON THE REEF, A NUMBER OF EVENTS SUCH AS THE UNBANNING OF THE ANC, THE DECISION BY THE IFP TO BECOME A NATIONAL PARTY AND THE ONGOING CONFLICT BETWEEN THE IFP AND THE ANC IN KWAZULU-NATAL CREATED A CLIMATE OF POLITICAL INTOLERANCE WHICH GAVE RISE TO THE COMMISSION OF GROSS HUMAN RIGHTS VIOLATIONS. DURING THIS PERIOD, FIFTEEN PEOPLE WERE KILLED AND SIXTEEN SERIOUSLY INJURED WHEN GUNMEN OPENED FIRE ON MOURNERS AT A NIGHT VIGIL ON 26 MARCH 1991.

THE COMMISSION FINDS FURTHER THAT THE SAP WAS INFORMED ABOUT THE NIGHT VIGIL AS WELL AS THE FEARS OF THE COMMUNITY OF AN IMPENDING ATTACK BY IFP SUPPORTERS. THE SAP WAS ASKED TO PROVIDE SOME PROTECTION TO MOURNERS. THE COMMISSION FINDS THAT, NOT ONLY DID THE SAP FAIL TO PROVIDE ANY ASSISTANCE OR PROTECTION, BUT ARRIVED SEVERAL HOURS AFTER THE ATTACK HAD TAKEN PLACE. THE COMMISSION FINDS THE SAP RESPONSIBLE FOR THE COMMISSION OF GROSS HUMAN RIGHTS VIOLATIONS IN THAT THE SAP FAILED TO PROTECT CITIZENS WHEN THEY WERE UNDER A LEGAL DUTY AND OBLIGATION TO DO SO.

Reference 785 - 0.01% Coverage

THE COMMISSION FINDS THAT THE SAP WAS DERELICT IN ITS DUTIES AND, BY OMISSION, ALLOWED THE GROSS VIOLATION OF HUMAN RIGHTS. THE COMMISSION FINDS THE SAP RESPONSIBLE FOR THE COMMISSION OF GROSS HUMAN RIGHTS VIOLATIONS.

THE COMMISSION FINDS THAT AN IFP SPOKESPERSON, SUZANNE VOS, CONFIRMED THAT IFP SUPPORTERS FROM THE NEARBY HOSTEL HAD CARRIED OUT THE ATTACK. THE COMMISSION FINDS THE IFP RESPONSIBLE FOR THE ATTACK ON SWANIEVILLE AND THE KILLING OF TWENTYSEVEN PEOPLE AND THE INJURY OF MANY OTHERS AND THEREBY RESPONSIBLE FOR THE COMMISSION OF GROSS HUMAN RIGHTS VIOLATIONS.

Reference 786 - 0.01% Coverage

618 The murder of Mr Elbin Manyamalala was witnessed by journalists. The police were present but allegedly did not intervene to assist him. THE COMMISSION FINDS THAT, ON 8 SEPTEMBER 1991, THE IFP DECIDED TO HOLD A RALLY IN THE JABULANI STADIUM. THE POLICE WERE INFORMED OF THE RALLY AS WELL AS THE FEARS OF RESIDENTS IN SOWETO RELATING TO THE RALLY. THE POLICE FAILED TO DIRECT THAT THE MARCHERS SHOULD TRAVEL ON ONE ROUTE AFTER THE RALLY. INSTEAD, IFP MARCHERS WERE ALLOWED TO MOVE FREELY, CARRYING ARMS, ALONG SEVERAL ROUTES FROM THE STADIUM. IN THE AFTERMATH OF THE MARCH, IFP SUPPORTERS ATTACKED INNOCENT RESIDENTS, KILLING THIRTEEN OF THEM AND INJURING EIGHTEEN OTHERS. THE POLICE FAILED TO TAKE ACTION TO PREVENT THESE ATTACKS. THE COMMISSION FINDS THE IFP AND THE SAP RESPONSIBLE FOR THE COMMISSION OF GROSS HUMAN RIGHTS VIOLATIONS.

Reference 787 - 0.01% Coverage

55 Phama's amnesty hearing had not taken place at the time of writing. 56 Human Rights Commission, Monthly Repression Report, May 1993. VOLUME 3 CHAPTER 6 Regional Profile: Transvaal

Reference 788 - 0.01% Coverage

634 Ms Zondiwe Mtshali and her husband, Mr Benson Mtshali, were victims of the blurring of ethnic and political boundaries. Benson Mtshali was burnt to death in September 1993 because he was Zulu-speaking. His attackers assumed that this meant that he was an IFP member. Ms Mtshali told the Commission that she and her husband had faced harassment and ostracism before his death and that they had been forced to seek refuge with other Zulu speakers. However, because of their refusal to align themselves politically, they faced further difficulties. THE COMMISSION FINDS THAT, IN THE PERIOD 1990 TO 1994, 'ETHNIC CLEANSING' TOOK PLACE ON THE REEF, PARTICULARLY IN AREAS SUCH AS THE EAST RAND AND ALEXANDRA. THE COMMISSION FINDS THAT INDIVIDUALS AND COMMUNITIES BECAME IDENTIFIED BY THE LANGUAGE THEY SPOKE, THE CHURCH THEY SUPPORTED, POLITICAL MEMBERSHIP, AREAS THEY LIVED IN AND THE SCHOOLS THEIR CHILDREN ATTENDED. THE COMMISSION FINDS THAT THE STATE, THE IFP AND THE ANC CREATED A CLIMATE OF POLITICAL INTOLERANCE IN WHICH THOUSANDS OF PEOPLE WERE FORCIBLY DISPLACED FROM THEIR HOMES. THE COMMISSION FINDS THAT THIS CLIMATE OF POLITICAL INTOLERANCE FACILITATED THE COMMISSION OF GROSS HUMAN RIGHTS VIOLATIONS.

Reference 789 - 0.01% Coverage

THE COMMISSION FINDS THE IFP RESPONSIBLE FOR THE DRIVE-BY SHOOTINGS IN WHICH ANC-ALIGNED RESIDENTS WERE ATTACKED, AND THEREBY FOR THE COMMISSION OF GROSS HUMAN RIGHTS VIOLATIONS.

Reference 790 - 0.01% Coverage

652 The East Rand was a major site of train violence. According to the Institute for the Study of Public Violence (ISPV), the track from Katlehong to Kwesine station was the line with the highest risk in South Africa. The Human Rights Committee records that the Germiston\Katlehong line suffered eighteen attacks resulting in twenty-seven deaths and eleven injuries between August and December 1992.

Reference 791 - 0.01% Coverage

THE COMMISSION FINDS THE IFP, THE SAP AND THE SADF RESPONSIBLE FOR THE KILLINGS THAT TOOK PLACE DURING TRAIN VIOLENCE ATTACKS AND THEREBY THE COMMISSION OF GROSS HUMAN RIGHTS VIOLATIONS.

Reference 792 - 0.01% Coverage

THE COMMISSION FINDS THAT MR AMOS TSHABALALA WAS ABDUCTED AND KILLED ON 1 AUGUST 1993 BY IFP-SUPPORTING HOSTEL-DWELLERS AT MSHAYAZEFE HOSTEL, THOKOZA. THE COMMISSION FINDS THAT HOSTEL-DWELLERS OF THE SAME HOSTEL WERE RESPONSIBLE FOR THE ABDUCTION, RAPE AND DEATH OF MS THEMBI MATLOPE AND MS MOLLY ZONDI AND FOR THE RAPE AND ATTEMPTED KILLING OF MS WINNIE MAKUBELA. THE COMMISSION FINDS THE IFP RESPONSIBLE FOR THE COMMISSION OF GROSS HUMAN RIGHTS VIOLATIONS.

Reference 793 - 0.01% Coverage

65 Human Rights Committee. VOLUME 3 CHAPTER 6 Regional Profile: Transvaal

Reference 794 - 0.01% Coverage

693 On 29 September 1991, the Civic Association of Southern Transvaal general secretary, Mr Sam Ntuli [JB00389/01ERKWA] (31), was shot dead in Thokoza as he drove along Khumalo Street in Thokoza at approximately 11h00, according to the Human Rights Committee, bringing to sixty the number of activists killed by alleged 'hit squads' in the previous fifteen months.

Reference 795 - 0.01% Coverage

701 The gang launched a series of attacks on the ANC, backed by a handful of Caprivi trainees who routinely visited Wesselton as members of the KZP. They bombed the offices of a local human rights lawyer and participated in an attack on mourners at the funeral of a victim of one of their attacks. Black Cat gang members allegedly received backing from white police officers in Ermelo. The Goldstone Commission found that police officials in Wesselton were involved in the disappearance of a docket into the killing and injuring of ANC members at this funeral in August 1990.

Reference 796 - 0.01% Coverage

Commission that the police assaulted members of his family when they arrived at his home. In the early hours of the morning, Blose was released. THE COMMISSION FINDS THAT THE BLACK CATS WAS A GANG OPERATING IN WESSELTON AND IN ERMELO. THE COMMISSION FINDS THAT THE GANG WAS SUPPORTED BY COMMUNITY COUNCILLORS AND RECEIVED MILITARY TRAINING FROM INKATHA IN A CAMP IN KWAZULU-NATAL. THE COMMISSION FINDS THAT THE GANG, TOGETHER WITH A NUMBER OF CAPRIVI TRAINEES, ATTACKED ANC MEMBERS AND ASSASSINATED THEM. THE COMMISSION FINDS THAT THE BLACK CATS WERE SUPPORTED BY MEMBERS OF THE SAP IN TERMS OF RESOURCES AND IN COVERING UP THEIR INVOLVEMENT IN ANC KILLINGS. MEMBERS OF THE BLACK CATS GANG HAVE APPLIED FOR AMNESTY FOR THE COMMISSION OF GROSS HUMAN RIGHTS VIOLATIONS.

Reference 797 - 0.01% Coverage

THE COMMISSION FINDS THE BLACK CATS, THE IFP, THE SAP AND THE SDUS RESPONSIBLE FOR THE COMMISSION OF GROSS HUMAN RIGHTS VIOLATIONS.

Reference 798 - 0.01% Coverage

THE COMMISSION FINDS THAT ALL THREE ORGANISATIONS SHOULD TAKE RESPONSIBILITY FOR THE GROSS HUMAN RIGHTS VIOLATIONS THAT WERE COMMITTED IN THE AREA. THE COMMISSION FINDS THE IFP RESPONSIBLE FOR THE KILLING OF SELLO KASI, A SEVENTEEN-YEAR-OLD MEMBER OF AZAPO. THE COMMISSION FINDS THAT AZAPO WAS RESPONSIBLE FOR THE KILLING OF ROBERT HLOMUKA, SECRETARY OF THE IFP YOUTH BRIGADE. THE COMMISSION FINDS THAT THE SAP FAILED TO PROVIDE ADEQUATE PROTECTION TO THE COMMUNITY OF BEKKERSDAL. THE COMMISSION FINDS THAT THE SAP, THROUGH THE ISU, WAS AN ACTIVE ROLE-PLAYER IN THE POLITICAL INTOLERANCE THAT PREVAILED IN BEKKERSDAL BETWEEN 1991 AND 1993.

Reference 799 - 0.01% Coverage

724 In addition to the failure of the security forces to intervene effectively in the internecine conflict that occurred during the 1990s, the police and army also continued, as in the 1980s, to be involved in the

direct perpetration of gross human rights violations. Most significant perhaps was the continued use of lethal force to disperse gatherings as well as ongoing use of torture in detention. For the first time during this period, concrete evidence of torture emerged when electric shock equipment was recovered during raids on two police stations. In addition, two major massacres occurred in Sebokeng and Daveyton after police opened fire on public gatherings leading to approximately twenty-six deaths. Renewed opposition to black local authorities in rural and peri-urban towns elicited a violent police response and resulted in a number of people being killed in street clashes with police.

Reference 800 - 0.01% Coverage

71 Violence in the Vaal, Dutch Observer Mission report, p.11; 72 Human Rights Commission, Monthly Repression Report, p.35.

Reference 801 - 0.01% Coverage

IN REVIEWING THE INFORMATION ON GROSS HUMAN RIGHTS COMMITTED AT SEBOKENG ON THE 26 MARCH 1990, THE COMMISSION FINDS THAT THE SAP AND COMMANDING OFFICER W DU PLOOY WERE DIRECTLY RESPONSIBLE FOR THE DEATHS AND INJURIES THAT OCCURRED.

Reference 802 - 0.01% Coverage

732 Several months later, a judicial inquiry concluded that police had used excessive force in their handling of the ANC supporters during the clash in Daveyton. Rand Supreme Court judge, Mr Justice B O'Donovan, also ruled that a group of six residents who were part of the crowd had taken part in the attack on a policeman, Lance Sergeant Jan Petus van Wyk, were guilty of murder. IN THE REVIEWING THE EVIDENCE OF GROSS HUMAN RIGHTS VIOLATIONS COMMITTED IN DAVEYTON ON THE 14 MARCH 1991, THE COMMISSION FINDS THE SAP RESPONSIBLE FOR THE MASSACRE BY USING EXCESSIVE FORCE AND BY FAILING TO USE NON-LETHAL METHODS OF CROWD CONTROL. THE COMMISSION FINDS FURTHER THAT DAVEYTON RESIDENTS WERE RESPONSIBLE FOR THE DEATH OF A YOUNG POLICEMAN, MR HENNIE VAN WYK.

Reference 803 - 0.01% Coverage

737 Although the 1990s was not characterised by the mass detentions that took place in the 1980s, torture during detention continued to occur. This is reflected in the data collected by the Johannesburg regional office, which indicates that, although levels of torture decline substantially during the 1990s, it remained a major gross human rights violation.⁷⁵ During this period, however, the number of reported killings exceeded the number of reported torture violations. By far the majority of torture victims who identified themselves as members of a political organisation, were ANC members.⁷⁶ A larger proportion of torture victims during this period

Reference 804 - 0.01% Coverage

739 The July 1992 death in custody of Mr Simon Mthimkulu, an eighteen-year-old Sebokeng youth, provoked pathologist Dr Jonathan Gluckman to make public his concerns about the treatment of people in police custody. His previous appeals to former President de Klerk, senior cabinet ministers and the Commissioner of Police, had proved fruitless. The Human Rights Commission confirmed that, at the time

that Gluckman made his allegations, an average of three people died every month while in police custody.⁷⁸

Reference 805 - 0.01% Coverage

77 See Graph D1c.5 in Johannesburg 1983–89. 78 Peace Action Monthly Report, August 1992; Human Rights Commission, Human Rights Update, July 1992, p. 9.

Reference 806 - 0.01% Coverage

751 The Commission received some statements from people who were attacked on suspicion of being witches and consequently suffered gross human rights violations.

Reference 807 - 0.01% Coverage

THE COMMISSION FINDS THE FORMER BOPHUTHATSWANA STATE, THE MINISTER OF POLICE, THE MINISTER OF DEFENCE AND MEMBERS OF THE BOPHUTHATSWANA DEFENCE FORCE RESPONSIBLE FOR THE COMMISSION OF GROSS HUMAN RIGHTS VIOLATIONS IN THE ODI AREA ON 7 MARCH IN THAT UNNECESSARY AND EXCESSIVE FORCE WAS USED, PROPER ORDERS TO DISPERSE WERE NOT GIVEN, ADEQUATE TIME TO DISPERSE WAS NOT GIVEN AND RELIANCE WAS

Reference 808 - 0.01% Coverage

769 The right wing was involved in various forms of political protest during the 1990s. Much of this protest activity was extremely violent and led to a range of gross human rights violations. In 1990, following Mr F W de Klerk's speech unbanning the ANC and other political organisations, members of the Conservative Party (CP) threatened mass demonstrations and strike action by whites. The largest demonstration was held on 26 May 1990 when approximately 50 000 protesters gathered at the Voortrekker Monument in Pretoria and were urged to fight to restore what the government had 'unjustly given away'.

Reference 809 - 0.01% Coverage

6 In the region covered by the Johannesburg office, the bulk of the victims of gross violations of human rights in the three categories of killing, severe ill treatment and torture belonged to the United Democratic Front (UDF) or the African National Congress (ANC). Almost all of the killings in the area were of members of predominantly black organisations: ~

Reference 810 - 0.01% Coverage

1 An important debate with which the Commission had to wrestle was, as has been fully discussed in the chapter on The Mandate, how to paint the backdrop against which such human rights violations occurred. Without some sense of the "antecedents, circumstances, factors and context" within which gross violations of human rights occurred, it is almost impossible to understand how, over the years, people who considered themselves ordinary, decent and God-fearing found themselves turning a blind eye to a system which impoverished, oppressed and violated the lives and very existence of so many of their fellow citizens.

Reference 811 - 0.01% Coverage

8 Often the hearings revealed just how far apart the opposing views were. But there were some heartening moments. There were signs that the hearings triggered a kind of self-analysis, a mood of introspection that may lead to a deeper realisation of the need for commitment to a new society and a culture of human rights.

Reference 812 - 0.01% Coverage

11 The Commission decided to host a hearing on compulsory military service. It was a difficult decision and one that followed a great deal of debate. It was clear that conscripts could not as a rule be described as victims of gross violations of human rights as defined in the Act. Some of the evidence that emerged at the hearing, however, showed that they were victims of another kind – victims of a system they found themselves obliged to defend.

Reference 813 - 0.01% Coverage

Human Rights Committee Junior Rapportyerbeweging

Reference 814 - 0.01% Coverage

American Association for the Advancement of Science Amnesty International Baragwanath Hospital
Centre for Psychosocial and Traumatic Stress Citizens' Commission on Human Rights South Africa
Democratic Nursing Organisation of South Africa Dental Association of South Africa Department of Health
Department of Psychiatry, Tygerberg Hospital Fanner, M Greater Johannesburg Welfare, Social Service and
Development Forum Groote Schuur Hospital Region

Reference 815 - 0.01% Coverage

Commission for Gender Equality; South African Human Rights Commission and South African NGO
Coalition

Reference 816 - 0.01% Coverage

Human Rights Committee Human Rights Watch (South Africa Desk) International Association of
Democratic Lawyers Jana, P Joffe, M M Joubert, C P Jurgens, J W KAIROS Keys, Liza

Reference 817 - 0.01% Coverage

Langeveld, L J Ledgerwood, T Legal Resources Centre Lichtenberg, E K W Liebenberg, I Lowenstein
International Human Rights Law Clinic of Yale Law School, Lawyers Committee for Human Rights and
others Magistrates' Commission McBride, P and Ekambaram, S McNally, T P Melamet, D A Minnaar, A
Moll, P G Mtetwa, C J Nathan, L

Reference 818 - 0.01% Coverage

South African Council for Town and Regional Planners South African Medical Services Care for the
Disabled South African National Council for Child and Family Welfare South African Police Service South

African Prisoners' Organisation for Human Rights South African Veterans Association: Tucker, P and Van Niekerk, M Steele, R Steiner, C Torr, D Travers, G N Tshishonga, M M Tswana Renaissance Movement University of Potchefstroom University of the Witwatersrand University of Venda Urban Monitoring and Awareness Committee Van Zyl, D H Von Lieres und Wilkau, K P C O White, C S Wright, G F

Reference 819 - 0.01% Coverage

2 The hearings illuminated the widely divergent perspectives of different sectors of the economy. Sharp differences emerged over the role business played or failed to play in the apartheid years. Questions were raised as to whether business had been involved in the violation of human rights, how business related to the state and whether or not business benefited from apartheid. In the process, the very premise of business as a homogeneous entity was questioned.

Reference 820 - 0.01% Coverage

11 In addressing the question of business participation in human rights violations, most business submissions took the view that such abuses required active, deliberate participation by individuals. Thus, Old Mutual stated in its opening paragraph that:
In principle, the mandate of the Commission which focuses on gross violations of human rights would almost certainly exclude Old Mutual from having to make any submission.

Reference 821 - 0.01% Coverage

13 As far as the business community was concerned, its purpose in participating in the Commission was to promote understanding of the role of business under apartheid and to explore areas where businesses failed to press for change – both at a political and at an organisational level. Failure to act quickly or adequately on the political front was regarded as an error of omission. Failure to adjust employment practices was likewise regarded as regrettable, but not amounting to a gross human rights violation.

Reference 822 - 0.01% Coverage

On occasions, there may have been isolated incidents of 'ill treatment' of employees by individual managers, as was unfortunately true of many institutions and business in South Africa over the past forty years. In certain cases, too, management may have been guilty of 'turning a blind eye', for example, to treatment meted out by supervisors to lower-graded (mainly black) workers. This may have been done under the implicit assumption of most whites during the times that the level of human rights that might be enjoyed by different groups was racially differentiated. Combined with possible implicit class prejudice, this may have resulted in certain forms of ill treatment of workers (for example through separate facilities, job reservation and so forth) - not gross violations of human rights as defined by the Commission - but ill treatment all the same.

15 In contrast, the BMF regards precisely such forms of ill treatment as human rights violations: The human rights violations by business are seen as those policies, practices and conventions which denied black people the full utilisation of their potential, resulting in deprivation, poverty and poor quality of life, and which attacked and threatened to injure their self-respect, dignity and well-being. Certain of these violations were open abuses, whilst some were indirect; yet others buttressed those carried out at a socio-political level.

Reference 823 - 0.01% Coverage

At decisive moments in the re-emergence of the democratic movement, business' initial reaction was invariably one of opposition, victimisation of activists and union officials, and recourse to the regime's security forces. The first reaction to a strike or attempt by unions to organise workers was all too often to call on the police. Many violations of human rights occurred as a consequence.

Given the major role played by the independent black trade union movement in fighting apartheid, the struggle for trade union rights and democracy were often indistinguishable. The overlap was not exact, while finding coherence to the extent that both the refusal to recognise trade unions on the grounds of race and the denial of franchise both constitute human rights violations. The struggle for trade union rights, for better working conditions and for democracy, in turn, led to a host of specific gross human rights violations that are the direct concern of the Commission.

Reference 824 - 0.01% Coverage

These forms of collaboration create and promote a context that leads to the systematic execution of gross human rights violations. It contributes to the emergence of an economic and political structure – a culture and a system which gives rise to and condones certain patterns of behaviour.

Reference 825 - 0.01% Coverage

31 The fact, however, that a former spy and Civil Co-operation Bureau (CCB) operative referred to the use that was made of covert credit cards cannot be ignored. The particular banker involved may not have had direct knowledge of why specific cards were being used. However, there was no obvious attempt on the part of the banking industry to investigate or stop the use being made of their facilities in an environment that was rife with gross human rights violations.

Reference 826 - 0.01% Coverage

40 The DBSA made a similar argument, pointing to the way in which its operations (particularly in the homelands) were "immediately framed within an apartheid political context". The DBSA submission noted, however, that it experienced ongoing tension between its development role and the political context within which it operated. It nevertheless accepted that it was "an integral part of the system and part and parcel of the apartheid gross violation of human rights."

Reference 827 - 0.01% Coverage

46 Similarly, it is evident that the state's policy of forcibly resettling into the impoverished homelands hundreds of thousands of black South Africans no longer needed on the increasingly mechanised, commercial farms was done, if not at the explicit request of the agricultural sector, certainly with its implicit support. Indeed, the nature of the precise link between commercial agriculture, the apartheid state and the infamous policies of resettlement as they were experienced by millions of South Africans during the 1960s, 1970s and 1980s is one that requires recognition and acknowledgement.⁵ Likewise, many farmers took advantage of the farm prison system, which provided them with free labour and resulted in many human rights abuses.⁶

47 Another critical area requiring deeper reflection by white farmers relates to the extent to which they failed – either by simple omission or through active hostility – to ensure better education for the children (other than their own) living on their farms. Education of farm children has long lagged notoriously behind even that education that was available for African and coloured children, either in the former

'homelands' or in the towns. This failure to educate children in a modern economy is itself a human rights abuse, for which the commercial farming sector must take at least some of the responsibility.

Reference 828 - 0.01% Coverage

56 The AHI was far more self-critical than other representative business organisations. It admitted that it had "committed major mistakes" in its support for separate development, its lack of moral and economic objections to apartheid, its insensitivity to issues involving human rights and its acceptance of the absence of a proper labour relations law. It accepted moral responsibility for this. It noted, however that:

Reference 829 - 0.01% Coverage

70 Finally, it is necessary to touch on the role of health and safety on the mines. A submission by Laurie Flynn¹¹ suggested that the dismal health and safety record of South African mines, and the way in which mining companies and successive government ministers of mines suppressed knowledge about the dangers of asbestos, constituted human rights abuses. He referred to the "obdurate and well documented refusal of the mining companies in South West Africa [Namibia] and in the diamond industry in South Africa itself." Similar themes were evident in the COSATU submission, which drew attention to the health hazards associated with mining and related industries.

Reference 830 - 0.01% Coverage

11 Laurie Flynn is a journalist and author who has published works on mining houses and human rights in Southern Africa. See especially his book, *Studded with Diamonds and Paved with Gold* (London: Bloomsbury, 1992) to which he referred the Commission.

Reference 831 - 0.01% Coverage

This was no reluctant decision imposed on them by coercive apartheid legislation. Many businesses, including subsidiaries of leading corporations, became willing collaborators in the creation of the apartheid war machine, which was responsible for many deaths and violations of human rights both inside and outside the borders of our country. It was, moreover, an extremely profitable decision.

Reference 832 - 0.01% Coverage

[by providing] the material means for the maintenance and defence of apartheid elements within the business community are guilty of directly and indirectly perpetuating the political conflict and associated human rights abuses which characterised South Africa between March 1960 and May 1994.

75 As noted above, the armaments industry falls into the category of second-order involvement with the apartheid regime. The moral case against the armaments industry is essentially that business willingly (and for profit) involved itself in manufacturing products that it knew would be used to facilitate human rights abuses domestically and abroad.

Reference 833 - 0.01% Coverage

At decisive moments in the re-emergence of the democratic movement, business's initial reaction was invariably one of opposition, victimisation of activists and union officials, and recourse to the regime's

security forces. The first reaction to a strike or attempt by unions to organise workers, was all too often to call on the police. Many violations of human rights occurred as a consequence.

Reference 834 - 0.01% Coverage

98 The argument put forward by sections of the business community, that they were not (directly) involved in gross human rights violations, was challenged by the trade unions and others. In this respect, the distinction made by Professor Mahmood Mamdani between "perpetrators and victims" on the one hand and "beneficiaries and victims" on the other, deserves careful attention.¹⁹

99 The BMF accused white business of violating human rights in specific ways. White business supported and did not oppose the location of black residential areas at "absurdly" long distances from work. "Business chose to provide hostels that kept men and women away from their families." In addition, white business relied "quite heavily" on the police to structure relationships with black workers, be it around strikes or repatriations. Managers served as police reservists and business co-operated with security agents in providing data on and monitoring workers. "Business continued to pay taxes quietly and rejected calls of civil disobedience."

Reference 835 - 0.01% Coverage

105 Business representatives disagreed. Ms Ann Bernstein, who heads the Centre for Development and Enterprise, argued (in her personal capacity) that business "is not the place to protect human rights". Rather, the Constitution, the government and ultimately elections are the mechanisms that ensure human rights. The South

Reference 836 - 0.01% Coverage

African Chamber of Business (SACOB) noted, however, that such issues had been discussed by the white business sector: "there are records of meetings at which a persistent case was made against the violation of human rights and the deleterious impact of apartheid laws."

106 As mentioned earlier, Old Mutual did not believe it contributed to gross violations of human rights as a result of its employment practices, "except possibly in some very indirect way by fulfilling its obligations to government by complying with the laws, paying taxes and investing in government stock."

107 By contrast, the Development Bank of Southern Africa (DBSA) accepted that, in supporting apartheid through providing development loans to homelands and by advising officials on policy, "the Bank was an integral part of the system and part and parcel of the apartheid gross violation of human rights".

Reference 837 - 0.01% Coverage

122 Unfortunately, the business submissions provided no specific details about this. Nevertheless, a few comments are in order. Where participation by business in the JMCs resulted in, or facilitated, subsequent human rights abuses by the security establishment, there is a clear case to answer. Where such participation resulted in the channelling of resources to townships, the moral issues are more opaque. While JMC-facilitated development in townships was certainly motivated by counter-revolutionary aims, there is an important difference between counterrevolutionary strategies based on providing infrastructure to people, and strategies based on torture and repression. Again, not all businesses played the same role in the process.

Reference 838 - 0.01% Coverage

126 Hundreds and probably thousands of South African private sector companies made the decision to collaborate actively with the government's war machine. This was no reluctant decision imposed on them by coercive apartheid legislation. Many businesses, including subsidiaries of leading corporations, became willing collaborators in the creation of this war machine, which was responsible for many deaths and violations of human rights, both inside and outside the borders of our country. In addition, a variety of businesses collaborated with the state in the national security management system. Business representatives, for example, joined the government's JMCs or their advisory structures, participated in defence

Reference 839 - 0.01% Coverage

Any notion that business could have acted as a watchdog of the government as far as human rights violations are concerned is totally unrealistic and should be dispelled. Business was unable to act in that way in the past and will not be able to do so in the future ... government is so powerful and dominant that a business organisation will seriously jeopardise its prospects of success by crossing swords with politicians.

Reference 840 - 0.01% Coverage

148 The mandate of the Commission requires it to make recommendations to ensure that past violations of human rights do not recur in the future. This requires a conscious commitment to realistic moral behaviour grounded in a culture of international human rights law. It would be a sad day for the nation, faced as it is with the opportunity for renewal, if business were to dismiss social concern, business ethics and moral accountability in labour relations as being of no direct concern to itself.

Reference 841 - 0.01% Coverage

164 The denial of trade union rights to black workers constituted a violation of human rights. Actions taken against trade unions by the state, at times with the cooperation of certain businesses, frequently led to gross human rights violations.

Reference 842 - 0.01% Coverage

23 The Jewish community in South Africa descends from immigrants of Anglo-German and Lithuanian origins who arrived at various stages during the nineteenth century. The SA Jewish Board of Deputies (formed in 1912) and the SA Zionist Federation (1898) are its two main representative bodies. Originally, members of the Jewish faith in South Africa looked to the Chief Rabbi of Britain for spiritual leadership. Eventually, in 1933, synagogues in the Transvaal federated under a chief rabbi. In 1986, Cape and Transvaal groupings that had remained fairly independent up until then amalgamated. While members of the Jewish community made their greatest contributions to South African human rights as individuals, some organisations also played a role. During the last years of apartheid, Jews for Justice and Jews for Social Justice were important voices of protest. The Gesher Movement, formed in Johannesburg in 1996, aims "to serve as a Jewish lobby speaking with one independent voice, 'to enlighten' the Jewish community in the new South Africa, and to combat Jewish racism."¹

Reference 843 - 0.01% Coverage

36 Du Plooy said that the appointment of chaplains and the involvement of the church in the military were governed by an official agreement between the state and the Dutch Reformed Church - approved by both the national synod and Parliament.⁶ Nico Smith said that many perpetrators of human rights abuses were never challenged by the Dutch Reformed Church but were tacitly or otherwise encouraged in their activities.

Reference 844 - 0.01% Coverage

52 The military chaplaincy gave moral legitimacy to a culture characterised by the perpetration of gross human rights abuses. It served to filter out dissenting voices, to strengthen the resolve to kill and to reassure the doubting soldier that he or she was serving the purposes of God. In spite of professions of a loyalty higher than that of the state, chaplains found themselves lending succour to persons trying to kill 'enemy' soldiers who were sometimes members of their own denomination.

Reference 845 - 0.01% Coverage

62 In their submissions, faith communities commonly confessed not only to a failure to speak, but also to a failure to act. Many communities that were opposed to apartheid in principle found it difficult to translate strong resolutions into practical action. In the nature of institutional politics, resolutions were watered down by the time they were actually passed.¹⁸ More than logistic problems, such failures represented "a blatant omission and silent approval of the conditions and main cause of human rights violations."¹⁹

Reference 846 - 0.01% Coverage

80 The representatives of faith communities at the hearings were overwhelmingly male. Only four of the sixty-six persons who appeared before the Commission in East London were women, and little mention was made of the links between racial, class and gender oppression. Women and women's groups played key roles in supporting victims and opponents of human rights abuses, as witnessed by the fact that most of those who testified at the human rights violations hearings were women, and usually did so on behalf of others rather than themselves. Yet, in churches and mosques, as elsewhere, they were relegated to secondary status.

Reference 847 - 0.01% Coverage

85 Leaders of communities that were more public in their opposition issued open petitions. In the 1970s, the MJC issued a letter of protest to the government over human rights abuses during the 1976 riots. The SACC and other ecumenical Christian leaders adopted a stronger tone as well, warning the government of what might happen should change not occur.

Reference 848 - 0.01% Coverage

2 All branches of the legal profession and interested organs of civil society were invited to make submissions on the role played by lawyers between 1960 and 1994. Those who responded to the Commission's invitation are listed elsewhere in this volume. The Commission was deeply disappointed that judicial officers (both judges and magistrates) declined to attend the hearing and that their responses took the form of a few written submissions. The representative bodies of the rest of the profession were slightly more forthcoming: written and oral submissions were received from the General Council of the Bar

(GCB), the Association of Law Societies (ALS) and the Society of Law Teachers. Several individual practitioners also submitted their views, as did the 'alternative' lawyers' organisations – the National Association of Democratic Lawyers (NADEL) and the Black Lawyers Association (BLA). The Legal Resources Centre (LRC) and Lawyers for Human Rights (LHR) also made significant submissions. From government, the Minister and Department of Justice put forward their views in submissions, and several attorneys-general also attended. Amnesty International and the Centre for the Study of Violence and Reconciliation gave the Commission the benefit of their views.

Reference 849 - 0.01% Coverage

I Recommendations on how the legal system can be transformed to reflect a human rights culture and respect for the rule of law, and which will address the perception that justice is the privileged domain of few in our society.

Reference 850 - 0.01% Coverage

It is not the purpose of the hearing to establish guilt or hold individuals responsible; the hearing will not be of a judicial or quasi-judicial nature. The hearing is an attempt to understand the role the legal system played in contributing to the violation and/or protection of human rights and to identify institutional changes required to prevent those abuses which occurred from happening again. We urge all judges both serving and retired to present their views as part of the process of moving forward.

Reference 851 - 0.01% Coverage

1 Health professionals have an ethical obligation to place the well-being of their patients at the forefront of their professional commitments. From ancient times up until the present day, this has been codified in a number of oaths, codes of conduct and international declarations. In addition, since 1948, many ethical codes and international human rights instruments have been formulated concerning the treatment of patients, detainees, hunger strikers, mental health patients, and on the role of nurses and other related matters.¹

2 The greatest drawback of these codes and oaths is the difficulty of monitoring and enforcing compliance with them. Responsibility for upholding these principles is left, by default, to professional organisations and statutory regulatory bodies in each country. This can be problematic if these institutions are themselves under the influence of the state or if they have colluded with or been complicit in violating human rights. The international health care community can help reinforce these standards by putting pressure on countries that violate them, and especially on professional organisations within those countries. However, it is often difficult for the international community to make a significant impact, except over extended periods.

Reference 852 - 0.01% Coverage

6 Issues of ethics and human rights are not usually included in the teaching curriculum of psychology masters' degree students. Similarly, there are no uniform guidelines for the teaching of ethics in South African health science faculties. DENOSA had the following to say about the teaching of ethics to nursing students:

Reference 853 - 0.01% Coverage

2 This was being reviewed at the time and had been widely criticised as inappropriate and inadequate to the circumstances prevailing in South Africa. (See submissions of the Psychological Society of South Africa and Citizens' Commission on Human Rights).

Reference 854 - 0.01% Coverage

7 During the period under review, ethics was taught on an ad hoc basis and, for the most part, students were not examined on these topics. There was, therefore, no uniformity in the way in which health professionals were made aware of, or given guidance on, incorporating issues of medical ethics and human rights into daily practice.

Reference 855 - 0.01% Coverage

9 The value of oaths and professional declarations in ensuring a human rights consciousness in clinical practice has been questioned by a variety of sources. If oaths and declarations are merely repeated and signed at the end of a period of training or study, they are unlikely to have any meaningful impact on the life and practice of health professionals. Ethics and human rights need to be incorporated holistically into the overall curriculum to ensure that these principles govern the activities of health professionals.

Reference 856 - 0.01% Coverage

11 Of all the health professionals in South Africa, district surgeons working under the apartheid government probably had one of the most difficult jobs in terms of upholding medical standards and human rights. On the one hand, they were under a statutory obligation to provide medical care for prisoners and detainees, to record information on the mental and physical health of inmates and to ensure that proper health conditions existed in terms of basic sanitation, food and general health care. On the other hand, there was (and perhaps still is) great pressure on them to support the police and prison authorities for 'national security' reasons.

Reference 857 - 0.01% Coverage

13 The evidence available to the Commission suggests that most district surgeons were not directly involved in committing gross violations of human rights during the period under review. Their most common offence was a failure to carry out their duties within internationally accepted guidelines of medical ethics and human rights. All these points are starkly illustrated by the Steve Biko story. The doctors failed to:

Reference 858 - 0.01% Coverage

16 Many district surgeons also claimed that they did not know they could override the orders or wishes of prison warders or police on medical matters - for example, by not releasing information or by insisting that warders leave the room during examinations.⁵ Finally, where a district surgeon did take a stand to uphold the human rights of his or her patients, he or she received little or no official support from the profession or the Department of Health.

Reference 859 - 0.01% Coverage

18 While it is easy to criticise district surgeons, it must also be appreciated that the conditions under which they had to work made it difficult for them to uphold human rights. They were given no specific training for work in the prisons, no continuing medical education and no independent avenues to report abuses. They were generally isolated from the rest of the profession and sometimes

4 Since the primary mandate of the Commission was to look at gross human rights violations, the instances of professional misconduct are limited to those mentioned in conjunction with a gross human rights violation. Nonetheless, there are still numerous allegations of misconduct. 5 Rayner, Mary (1987). *Turning a Blind Eye*, pp 29-31, 53-54.

Reference 860 - 0.01% Coverage

19 Institutional bodies such as the Department of Health, the SAMDC and the MASA contributed indirectly to breaches of ethics by district surgeons. None of them took responsibility for the inadequacies of the system in which these doctors operated. The Department of Health was responsible for ensuring that district surgeons (who were, after all, employees of the Department of Health) were aware of their rights and responsibilities within the prison and police systems. It should have provided practical guidelines for action by district surgeons faced with situations in which violations of ethical conduct seemed inevitable. The SAMDC was supposedly responsible for dealing with those guilty of professional misconduct and for educational guidelines and ethics. There are well-documented cases in which the SAMDC failed to take proper action on professional misconduct. Both the SAMDC and the MASA gave little support to those who upheld human rights, thus discouraging health professionals from challenging the system. None of these organisations provided guidelines to assist district surgeons in dealing with adverse situations, in which it was almost impossible to treat detainees properly.

Reference 861 - 0.01% Coverage

6 This is a summary of the case presented at the Health Sector hearing on 17 June 1997 by the Health and Human Rights Project.

Reference 862 - 0.01% Coverage

21 Health professionals who are employed in situations in which they have dual loyalties are, because they do not enjoy full independence in making or implementing decisions, at risk of becoming involved in overt or covert abuses of the human rights of their patients. It is all too easy for health professionals who are not particularly vigilant or well-informed to assume the culture of the organisation for which they work, rather than maintaining independence and putting the needs and rights of patients above those of the organisation. Appropriate measures are needed to prevent or pre-empt the moral and ethical dilemmas that may arise for health professionals faced with the (often conflicting) needs of their patients and expectations of their employers. This issue needs careful consideration.

Reference 863 - 0.01% Coverage

38 Military health professionals had a particularly difficult time in upholding international standards of medical ethics and human rights. While they were supposed to follow the same ethical codes as civilian medical workers, they were, at the same time, required to follow orders given by superiors. This created an atmosphere of dual loyalty for these individuals.

Reference 864 - 0.01% Coverage

39 It is apparent from this account that military medics were forced to violate international and local standards of medical professional conduct and human rights and that many were personally traumatised by their experiences. Many of them have had great difficulty reintegrating into and becoming productive members of civilian society.

40 As yet, relatively little is known about the human rights violations committed by health professionals in the military. The SAMS submission to the Commission focused on the history, functions and administrative structure of the service, rather than considering any possible involvement in gross human rights violations. Many questions were deferred because they related to supposedly 'classified' (secret) operations. For example, the SAMS submission referred to three special projects undertaken by the Psychology Directorate. The reference was followed by the

Reference 865 - 0.01% Coverage

disclaimer: "As these projects have national strategic and security implications, they are not discussed in detail in this non-restricted document." However, the little information that the Commission does have on the violation of human rights by the SAMS suggests that military objectives often took precedence over medical objectives. In June and July 1998, a special hearing on the SADF's chemical and biological warfare programme uncovered new information about the extent of involvement by the medical profession in human rights violations.²⁰

Reference 866 - 0.01% Coverage

43 The panel to which the SAMS made its presentation felt strongly that its submission was evasive, that it failed to consider the very real ethical challenges faced by health professionals in the military and that it made no attempt to consider the possible involvement of health professionals in human rights abuses, either through acts of omission or commission. The quality of the SAMS responses to the very extensive and probing list of questions posed at the hearing merely entrenched this perception.

Reference 867 - 0.01% Coverage

47 Submissions and amnesty applications forwarded to the Commission, together with court evidence and secondary sources, gave numerous indications that health professionals were involved in committing human rights abuses and used their

22 'Report of the Kassinga attack prepared by a joint UNHCR/WHO mission on 30 May 1978', reproduced as Annexure V in UN document 13473 of 27 July 1979. 23 Report received from the Institute van Zuidelijk Afrika, Netherlands, 1978. 24 See report of General Pierre Steyn to President FW de Klerk, 20 December 1992. 25 This section was based on information from the submissions by Dr David Klatzow, Professor Michael Simpson, the Health and Human Rights Project, and the Independent Medico-Legal Unit.

Reference 868 - 0.01% Coverage

58 Medical schools played a significant role in perpetuating human rights abuses. Black people were systematically prevented from obtaining training in the health sciences and, even where this was allowed or provided for, received an inferior quality of education to that of white students. Medical schools failed to teach ethics and human rights. Professors in medical schools held dual appointments with both the state and the medical schools, leaving them vulnerable as health professionals with dual obligations.

Finally, with a few exceptions, medical faculties did not speak out about the unethical nature of apartheid medicine and its adverse effects on training and patient care.

Reference 869 - 0.01% Coverage

Note: Figures are the mean average percentages for 1968-1977. Source: Data from the Health and Human Rights Project submission to the Commission, p87.

32 Submissions by the Department of Health and the Health and Human Rights Project. VOLUME 4
CHAPTER 5 Institutional Hearing: The Health Sector

Reference 870 - 0.01% Coverage

Inadequate teaching of ethics and human rights

67 None of the health science faculties made the teaching of ethics and human rights a priority. Most often, courses on these subjects were optional and the students were not tested on the material, thus reducing their incentive to attend the lectures. The teaching institutions failed to integrate ethics and human rights into the curricula in a way that could have helped students understand their importance and practical applicability. In addition, students were not encouraged to question the status quo or to protest at the differences in the provision of health care by race. Professor Frances Ames told the Commission:

Reference 871 - 0.01% Coverage

71 While some medical schools did start to speak out against the inequities of apartheid medicine, especially in the latter part of the period under review, they were generally complicit in committing human rights abuses by helping to create and perpetuate the racist environment in which health professionals were trained. Greater efforts should have been made by the lecturers and administrators to provide equal educational opportunities for all students. The medical schools could have challenged more vociferously the issue of segregated facilities, hospital rules concerning the treatment of patients, the lack of promotion of black doctors and the unequal resource allocation to black and white teaching hospitals. In addition, they could have encouraged their students to question the validity of the system and taught them how to maintain their integrity as doctors by upholding international ethical standards for the profession. Finally, they could have been more vocal in encouraging the professional organisations to take a stand against apartheid medicine and the injustices within the profession that stemmed from the maldistribution of resources.

Reference 872 - 0.01% Coverage

72 Nurses in South Africa form the largest body of health workers in the country and make a great impact on health care delivery. During the period under review, they were very often at the frontline when it came to treating patients who had been subjected to human rights abuses resulting in injuries.

Reference 873 - 0.01% Coverage

73 Nurses working for the prison services were very often the first points of contact for prisoners or detainees with medical complaints arising from abuses. The role of nurses in preventing and reporting abuses could thus have been absolutely crucial, as they could have brought cases to the attention of the relevant authorities and the public at large. The fact that this seldom happened reflects the hierarchical relationship between nurses and doctors, the subordination of nurses, the lack of awareness of ethical

rights and responsibilities and the failure of the South African Nursing Council (SANC) to support and encourage the observance of human rights. Rather, nurses were encouraged to support the political situation of the day:

Reference 874 - 0.01% Coverage

74 Submissions and statements received did not indicate that nurses actively participated in gross human rights violations, but they did suggest that acts of omission and 'turning a blind eye' were common. "I think we are all guilty, but we had blinkers on, so did not see it at the time."³⁷

Reference 875 - 0.01% Coverage

to the hierarchy (doctors, matrons, sisters, nurses) and to authority of any kind (for example, the police). On the other hand, those who were conscious of human rights and ethical issues found themselves having to lie (for example, to admit a patient with 'severe depression' when they knew this was not the diagnosis); discouraging patients from going to hospital when they knew hospital care was desirable, and performing procedures (for example, removing bullets) for which they knew they were not qualified.

Reference 876 - 0.01% Coverage

Involvement in human rights abuses

80 While it was extremely difficult to find any hard evidence of overt involvement in gross human rights violations by psychologists, the profession was undoubtedly involved in human rights abuses through acts of omission. It also displayed a general apathy in relation to issues such as the effects on mental health of endemic violence, detention, solitary confinement and torture. In addition, until very recently, the profession failed to draw attention to the incontrovertible link between apartheid and mental health or to comment on the destructive effect of apartheid policies on the mental health of those they oppressed. According to one submission:

Reference 877 - 0.01% Coverage

It is evident that the predecessor of the South African Federation for Mental Health at the national level was supportive of the apartheid policies of the government and did little or nothing to oppose other human rights violations in the field of mental health. It even reprimanded committee members or staff who did so.

81 Various submissions reported that individual psychologists were involved in human rights abuses and/or unethical conduct that may have led to abuses. Some of those named were psychologists EG Malherbe, RW Wilcocks and HF Verwoerd who, for example, advocated racist policies like job reservation and prohibition of sexual intercourse between the races. Others mentioned were psychologists like ML Fick and JA van Rensburg, who were amongst those who propagated ideas of black intellectual inferiority. These views bolstered segregationist policies that resulted in gross violations of human rights.

Reference 878 - 0.01% Coverage

86 The abuse of diagnostic tools by mental health professionals in collusion with the state must be regarded as a violation of human rights. Diagnosis was used to silence activists or opponents of the state, condemning them to institutions where they were under state control. This tendency increased the stigma attached to mental health institutions.

Reference 879 - 0.01% Coverage

89 As with other health professionals, mental health professionals received very little under- or postgraduate training in ethics or human rights issues. At the time of reporting, psychologists were still not required to take an oath on graduation or registration and appeared to be acquiring knowledge about appropriate conduct by default rather than design.

Reference 880 - 0.01% Coverage

Psychiatric patients remain a vulnerable group for discrimination and abuse of human rights. Both the mentally ill and the mentally handicapped are clearly stigmatised and thus discriminated against ... In particular, there is a tendency to provide a differential level of care to different socio-economic groups, which is similar to the dehumanisation of other deprivations we have lived through.⁴⁰

94 The 'sins' of the mental health profession in South Africa were largely those of omission, although there is some evidence of more direct involvement in unethical conduct leading to human rights abuses. Unfortunately, because of the veil of secrecy surrounding the inner workings of the SADF and SAP and the invocation of the Official Secrets Act, it was not possible to perform an adequate assessment of

Reference 881 - 0.01% Coverage

43 Submission by the Health and Human Rights Project. 44 Personal correspondence from Mr N Prinsloo to Dr W Orr, 24 July 1997. 45 The MASA Constitution.

Reference 882 - 0.01% Coverage

MASA was so wrapped up in its white, male, elitist, educated, professional world as individuals and as a collective organisation and as part of a broader society from which doctors were drawn, that it failed to see the need to treat all people as equal human beings. Perhaps the same could be said of other groupings in society. MASA allowed black and white people to be treated differently, and this is the form of human rights violations for which it stands disgraced.

Reference 883 - 0.01% Coverage

b the devastating effects of apartheid on health and human rights, and

Reference 884 - 0.01% Coverage

116 The PDG highlighted a number of other concerns in its submission: The first was the harassment of NAMDA and its members, which manifested itself in various ways. Second, was the concern that so few health professionals came forward at the time to testify about human rights abuses in the profession. "It seems that many more health professionals were aware of problems or were involved in problematic practices than they were prepared to acknowledge." A third concern was the way in which certain research was conducted, particularly in the area of occupational health: for example, heat acclimatisation chambers set up to 'customise' workers to the work place. Last was the fact that, at the time when NAMDA was supporting the 'Free the Children' campaign, MASA was involved in drawing up, 'Children in places of detention: a code for their handling'. In other words, while NAMDA abhorred the very concept of detaining children, MASA was trying to find ways to make it more acceptable.

Reference 885 - 0.01% Coverage

117 Similarly, it is evident that nurses did not feel that their statutory body, the SANC, or their professional organisation (then the South African Nursing Association) offered appropriate or adequate guidance and support for nurses who found themselves in situations where human rights were abused.

Reference 886 - 0.01% Coverage

We further acknowledge and accept without justification that Council was influenced by the policies of the government of the day. This could have resulted in both a conscious and unconscious perpetuation of those discriminatory policies and legislation, leading to gross violations of human rights.

Reference 887 - 0.01% Coverage

We therefore wish to apologise unreservedly both for conscious and unconscious activities that could have had the effect of undermining human rights from time to time.

Reference 888 - 0.01% Coverage

121 These admissions on the part of the SANC make it unsurprising that nurses failed to respond more vigorously to the human rights abuses with which they were confronted. Where leadership failed to lead on issues of human rights and, at times, was seen to sanction and support apartheid policies and practices, those in subordinate positions would have needed unusual courage to protest, particularly when threatened, as was Ms Betty Ncanywa, with loss of employment.

Reference 889 - 0.01% Coverage

126 In other words, the SPSA was a largely reactive body that did not play a proactive role in ensuring that the human rights of mentally ill people were upheld.

Reference 890 - 0.01% Coverage

130 Some would argue that, because the profession was so small, any intervention or declarations would have had little effect. In addition, the fact that psychology was low in the hierarchy of health care has been put forward as a reason for the profession's failure to act on issues which should have drawn rigorous condemnation. These arguments, however, appear more as attempts at self-justification than as valid reasons for the profession's failure to respond to human rights abuses. For instance, in July 1987, the SPSA issued the following statement:

Reference 891 - 0.01% Coverage

The Board members and staff of the SAFMH acknowledge that the Board of the National Council for Mental Health was guilty of activities contrary to the promotion of good mental health, by actively and tacitly supporting the apartheid policies of the previous government and failing to support those within its ranks who protested against apartheid atrocities and human rights violations in the field of mental health. They are also conscious of many acts

Reference 892 - 0.01% Coverage

132 The Commission acknowledged that it was difficult for health professionals, particularly those with dual loyalties, to fight against the systemic human rights abuses that apartheid so deeply entrenched in the health sector. There were, however, many instances where people protested quietly or vociferously, and a few who put their careers and lives at risk in protest against violations of human rights. Many of the people who protested about the conditions under which health services were delivered or did not co-operate with state authorities were victimised in various ways. Some were fired from their jobs; others ruined their chances of promotion; some faced personal violence.⁴⁶

Reference 893 - 0.01% Coverage

142 Education in respect of human rights for all health professionals failed to address crucial patient-care issues.

Reference 894 - 0.01% Coverage

1 The South African media played a crucial role in helping reflect and mould public opinion during the years under review. However, could the media also be said to have been directly responsible for gross human rights violations? And to what extent were they responsible for the climate in which gross human rights violations occurred?

Reference 895 - 0.01% Coverage

4 The central point made in these submissions was the suggestion that the media, particularly those media that directly supported government policy, had provided a "cloud of cover" under which gross human rights violations were possible. More bluntly, the media during apartheid were seen to have "made what happened to Biko acceptable". This gave some direction to the proposed hearings, raising questions such as how and in what circumstances such a "cloud of cover" was created; what its implications were, especially for the journalists who worked in the different media, and what lessons could be drawn for the future.

Reference 896 - 0.01% Coverage

17 For example, content analysis by Professor John van Zyl over a period of sixteen years revealed a distinct bias at the SABC. According to his analysis, news bulletins maintained and cultivated a mindset amongst white viewers that apartheid was natural and inevitable. SABC programming, he found, was instrumental in cultivating a "war psychosis", which in turn created an environment in which human rights abuses could take place.

Reference 897 - 0.01% Coverage

38 Undoubtedly, the ANC's media offensive assisted in the war against apartheid and may have contributed to a climate of violence. But it is difficult to conclude that the broadcasts alone were directly responsible for the large number of incidents of gross human rights violations recorded in the SADF document, particularly as nobody was forced to tune in and listen to Radio Freedom.

Reference 898 - 0.01% Coverage

that the Afrikaans press had been an integral part of the structure that had kept apartheid in place, particularly in the way Afrikaans papers had lent their support to the NP during elections. The submissions maintained that, although the papers may not have been directly involved in violations, they should accept moral responsibility for what happened because they had helped support the system in which gross human rights violations occurred.

59 They said that “many Afrikaans journalists were deaf and blind to the political aspirations and sufferings of black fellow South Africans” and did not inform their readers about the injustices of apartheid. When knowledge about gross human rights violations became public, the journalists felt they had too readily accepted the denials and disingenuous explanations of the NP. Those who made submissions also sought forgiveness for their lack of action and committed themselves to ensuring that history would not repeat itself.

60 Professor Ari de Beer echoed the general tone of these submissions. He said he had felt compelled to approach the Commission because of the revelations at earlier Commission hearings, particularly those of Vlakplaas. Professor de Beer felt that he and many other “God-fearing” Afrikaners could not accept personal responsibility for specific gross human rights violations. Nevertheless, he did feel that there should be an acceptance of individual and collective responsibility for those violations committed under the ideological veil of apartheid, in the name of the Christian religion and Afrikanerdom. He expressed regret for keeping quiet about apartheid when he knew he should have actively protested against it. He challenged those who claimed that the Afrikaans press had nothing to answer for.

Reference 899 - 0.01% Coverage

75 The first concerned the Newspapers Press Union (NPU), representing the major newspaper groups. The NPU came under considerable attack in both written and oral testimony at the hearing. One accusation from a prominent journalist went so far as to implicate the NPU in gross human rights violations. Jon Qwelane, speaking of the NPU’s army and police agreements with government, asked:

Reference 900 - 0.01% Coverage

98 Although the media-room spies denied ever having being involved in gross human rights violations, poet and writer Don Mattera said that Horak had started whispering campaigns, suggesting that certain left-wing journalists were informers. He even suggested that Mattera was a CIA agent. Mattera said Horak’s work was to vilify and destroy. For Mattera, this resulted in almost 350 raids on his house and 150 terms of detention. He added that Horak carried a gun and was allowed to bring it to work at The Star.

Reference 901 - 0.01% Coverage

104 By not reporting honestly on the human rights abuses of the NP government, the Afrikaans press as a whole stands condemned for promoting the superiority of whites and displaying an indifference to the sufferings of people of colour. Despite a limited number of individuals who rejected the system, and despite examples of resistance to the policy of slavish reporting on government and race related issues, exceptions to the long history of actively promoting the former state and its policies were minor ones. (Their heirs, significantly, made a significant gesture towards reconciliation by making personal submissions of regret following the absence of their employers from the hearing.)

Reference 902 - 0.01% Coverage

110 Two initial questions were asked before the media hearing began. Could the media under apartheid be held responsible for the perpetration of gross human rights

Reference 903 - 0.01% Coverage

112 State restrictions on the freedom of the media played an important role in facilitating gross violations of human rights during the period covered by its mandate. These restrictions grew in intensity until more than 100 laws controlled the right to publish and broadcast. Although not themselves a gross violation of human rights as defined by the Act, the restrictions denied the right of South Africans to a free flow of information and ideas. At their worst, particularly during the successive states of emergency after 1985, the restrictions amounted to pre-publication censorship of information on state-inspired and state-sanctioned violations.

Reference 904 - 0.01% Coverage

115 The Afrikaans media (at least until the last few months of PW Botha's tenure as State President) chose to provide direct support for apartheid and the activities of the security forces — many of which led directly to gross human rights violations.

Reference 905 - 0.01% Coverage

118 The labour policy of the SABC, as expressed in Section 14 of the Staff Code and the apparent alternatives to dismissal for violations of the code, is a flagrant violation of the basic human rights of workers. Employment discrimination based on race and gender, and prevalent throughout South African society, was another feature of SABC employment practice.

119 The racism that pervaded most of white society permeated the media industry. This is supported by ample testimony presented to the Commission concerning the failure of many white journalists to delve thoroughly enough into allegations of gross human rights violations involving black people.

120 With the notable exception of certain individuals, the mainstream newspapers and the SABC failed to report adequately on gross human rights violations. In so doing, they helped sustain and prolong the existence of apartheid.

Reference 906 - 0.01% Coverage

2 Numerous statements to the Commission provided extensive evidence of gross human rights violations suffered by prisoners, either in detention or serving prison sentences. This testimony supported the considerable body of published accounts that shed light on the particular role played by prisons in the period under review. It also highlighted the irony that many of the leaders of our new democracy spent long years in prison because of their opposition to apartheid.

Reference 907 - 0.01% Coverage

5 The two-day hearing at the Fort was made financially and practically possible through the assistance of the Human Rights Desk of the Gauteng Greater Metropolitan Council.

Reference 908 - 0.01% Coverage

9 Pass law offenders were sent to prison, not because they were criminals, but because they did not meet the administrative requirements of a racist, apartheid law. The result was that a large number of people were sent to prison for offences that would not have qualified as criminal anywhere else in the world. Moreover, the treatment of pass law offenders could well be interpreted as a human rights violation, especially considering the nature of prison life at the time. Prisoners of all races experienced overcrowding and harsh conditions, but conditions were particularly brutal for black prisoners. In addition, gangs dominated the non-political sections of prisons. There was thus a strong probability that offenders, especially young and first-time offenders, would be drawn into gangsterism. Prisons thus became a base for the criminalisation of a significant part of at least two generations of young South Africans.

Reference 909 - 0.01% Coverage

11 The second gap concerned detention without trial. There were practical rather than legal reasons for excluding detention from the prison hearings. The working group had to take into account the fact that only two days could be allocated to the hearing, putting immense strain on an already overloaded programme. In addition, a number of testimonies about experiences under detention had already become a regular feature at human rights violations hearings around the country, the case of Steve Biko being an important example.

12 The exclusion of detentions from the hearing, however necessary, was unfortunate. The Human Rights Committee¹ has estimated that some 80 000 South Africans were detained between 1960 and 1990, up to 80 per cent of whom were eventually released without charge and barely 4 per cent of whom were ever convicted of any crime. Witnesses before the Commission testified about the many different ways in which detention was used as a measure of repression by the state, dating from the passing of the notorious 90-day detention clause in May 1963.

Reference 910 - 0.01% Coverage

1 Human Rights Committee (1998), *A Crime Against Humanity*, edited by Max Coleman. 2 Human Rights Committee (1998), page 55.

Reference 911 - 0.01% Coverage

17 The prisoners were not taken to court but to labour bureaux where they would be induced or forced to volunteer. Joel Carlson, a Johannesburg attorney, uncovered some of the gross violations of human rights that resulted from the system. An affidavit by Robert Ncube in the late 1950s stated:

Reference 912 - 0.01% Coverage

20 Testimony was heard from twenty-five witnesses during the two-day hearing. Most witnesses had experienced prison first-hand, either personally or through their immediate families. In addition, evidence was heard from a number of specialists. These included Ms Paula McBride, a regular visitor to death row; Dr Judith van Heerden, an expert on prison health; Mr Benjamin Pogrand, the journalist most closely involved in the prison trials of the 1960s and 1970s, and Mr Golden Miles Bhudu of the South African Prisoners' Organisation for Human Rights (SAPOHR).

Reference 913 - 0.01% Coverage

39 Narkedien's testimony confirmed that of Ms Nobuhle Mohapi, at the first human rights violations hearing in East London. Mohapi said that, when she was detained, she was told that her child had died and that she would be allowed to attend his funeral only if she signed a statement that had been prepared for her. She refused to sign and was later released to discover that her child was not dead.

Reference 914 - 0.01% Coverage

The primary purpose of this submission is to ensure that the Truth and Reconciliation Commission places on record the fact that the use of the death penalty in South Africa constituted a gross human rights violation ... It would be academic to ask whether or not the death penalty was associated with 'conflicts of the past'. It was but one of the methods used by those with power to oppress those without. 1 154 people were executed in South Africa in the ten-year period 1976-1985. The state apparatus that arrested, interrogated, tried, imprisoned and executed 1 154 people for capital crimes in South Africa was the same apparatus that maintained, often by brutal force, the apartheid system.⁹

Reference 915 - 0.01% Coverage

48 Paula McBride told of her perceptions as a daily visitor to death row between 1987 and 1990. She came to give evidence, she said, because, "In my mind, the death penalty is a gross human rights violation and should be recorded [as such] at the Truth and Reconciliation Commission." Capital punishment, she said, "brutalises not only those who are sentenced, but those who sentence them – the judges – and it brutalises our whole country, because if we allow it to happen, we participate in it."

Reference 916 - 0.01% Coverage

69 The Department of Prisons created the 'farm prison' system as a basis for providing cheap labour for white farmers. Africans arrested for pass law offences were frequently used to provide this form of labour. Although the Commission was not presented with evidence of this, it has been recorded elsewhere that the system resulted in numerous instances of gross human rights violations, some of which resulted in death.

Reference 917 - 0.01% Coverage

10 This list includes such names as are known to the Commission. See also Hilda Bernstein, No 46 - Steve Biko, IDAF, London, 1978; Human Rights Commission, Deaths in Detention: Fact Paper FP7, Johannesburg, August 1990.

Reference 918 - 0.01% Coverage

The Commission is required by law to investigate all aspects of the conflicts of the past which gave rise to gross violations of human rights and to consider the perspectives and motives of the various participants within that conflict.

Reference 919 - 0.01% Coverage

As a national serviceman in the army, I believed and I was sure that I contributed to keep people's lives safe. We also heard a lot of different atrocities that took place and the moment that an Afrikaner says it, it

is not believed. But you know that, while I was in the army, I didn't talk to people or receive commands or instructions that led to the violation of human rights.

Reference 920 - 0.01% Coverage

The Declaration is headed towards a just peace in our land, a Declaration to end conscription. We live in an unjust society where basic human rights are denied to the majority of the people. We live in an unequal society where the land and wealth are owned by the minority. We live in a society in a state of civil war, where brother is called on to fight brother. We call for an end to conscription. Young men are conscripted to maintain the illegal occupation of Namibia and to wage unjust war against foreign countries. Young men are conscripted to assist in the implementation and defence of apartheid policies. Young men who refuse to serve are faced with the choice of a life of exile or a possible six years in prison. We call for an end to conscription. We believe that the financial costs of the war increase the poverty of our country and that money should be used rather in the interests of peace. We believe that the

Reference 921 - 0.01% Coverage

13 See also chapter on Consequences of Human Rights Violations. VOLUME 4 CHAPTER 8 Special Hearing: Conscription

Reference 922 - 0.01% Coverage

1 In light of the direct impact of the policies of the former state on young people and the active role they played in opposing apartheid, the Commission decided to hold hearings on the experiences of children and youth. Many of those who testified before the Commission were eighteen years old or younger when the gross violations of human rights occurred.¹ However, it was considered important that those who were under eighteen years of age during the life of the Commission be given the opportunity to testify. Indeed, before these special hearings, few children under the age of eighteen had approached the Commission to tell their stories.

Reference 923 - 0.01% Coverage

Children subjected to gross human rights violations

3 The hearings provided an opportunity to focus on the impact of apartheid on children and youth. Over the years, children and young people were victims of and witnesses to of many of the most appalling gross human rights violations in South Africa's history. The effects of exposure to ongoing political violence may have had serious effects on the development of many of these children.² It was, therefore, considered imperative that the trauma inflicted on children and young people be heard and shared within the framework of the healing ethos of the Commission. Recognition of the inhumanity of apartheid was seen as a crucial step towards establishing a human rights framework for children and young

Reference 924 - 0.01% Coverage

4 The report does not, however, claim to be representative of all children and youth. Given the Commission's focus on gross human rights violations, those who gave evidence at the hearings on children and youth spoke mainly of the suffering of young people. Few chose to speak of, or to report on, the heroic role of young people in the struggle against apartheid. Many saw themselves not as victims, but as soldiers or freedom fighters and, for this reason, chose not to appear before the Commission at all.

Others, fearing reprisals from family or community, remained silent. Sometimes close family members were unaware of or strongly opposed to the political activities of young people. This accounts for any apparent contradictions between the perceptions of mothers and other family members who gave testimony and those of the many young people who excluded themselves from the hearings.

Reference 925 - 0.01% Coverage

A culture of human rights and children's rights

Reference 926 - 0.01% Coverage

11 The South African social fabric was shaped by apartheid laws and structures that exposed the majority of South Africa's children to oppression, exploitation, deprivation and humiliation. Apartheid was accompanied by both subtle and overt acts of physical and structural violence. Structural violations included gross inequalities in educational resources along with massive poverty, unemployment, homelessness, widespread crime and family breakdown. The combination of these problems produced a recipe for unprecedented social dislocation, resulting in both repression and resistance.⁴ This contributed to a situation that made possible the gross human rights violations of the past.

Reference 927 - 0.01% Coverage

6 Submission by the South African Human Rights Commission, 'Human Rights Violations by the Apartheid State against Children and Youth', 12 June 1997.

Reference 928 - 0.01% Coverage

47 Statements and testimony provided surprisingly little evidence of violations against children under the age of twelve. It is unlikely that this was a result of under-reporting, as violations perpetrated against the very young have tended to invoke the strongest condemnation. By far the largest category of victims to report to the Commission fell into the thirteen to twenty-four age bracket (see figures 1-4). For this reason, some adaptations to the accepted definition of children and youth were made for the purposes of this report. Children between the ages of thirteen and eighteen experienced violations equivalent to their nineteen to twenty-four year old counterparts, and it was considered that a more appropriate unit of analysis could be achieved by combining these age categories to include young people between thirteen and twenty-four years of age. This reflects, first, the fact that this age group was a clear target for gross human rights violations in South Africa and, second, the fact that those who were more likely to be victims

Reference 929 - 0.01% Coverage

48 Figures 1-4 reflect evidence gathered by the Commission with respect to the types of violations investigated. They do not reflect a universal experience of violations; only those that were reported to the Commission. Many South Africans who experienced human rights violations did not come to the Commission and are therefore not represented. Many parents testified on behalf of their children. Significant, too, was the fact that many women and girls chose not to testify about violations they themselves had experienced. They spoke instead of the violations committed against others, notably their fathers, sons and brothers. The figures must, therefore, be read within the framework of the Commission's experience rather than analysed as definitive figures of all violations experienced in South Africa from 1960 - 1994.

Reference 930 - 0.01% Coverage

11 Scott, D. (1997) Submission on Children and Youth. Original source: Lawyers Committee for Human Rights, (1986) *The War against Children: South Africa's Youngest Victims*, New York.

Reference 931 - 0.01% Coverage

■ CONSEQUENCES OF APARTHEID AND GROSS HUMAN RIGHTS VIOLATIONS

Reference 932 - 0.01% Coverage

84 South African children were exposed to countless horrors and suffered considerable trauma because of apartheid. Their role and involvement in the resistance struggle placed them on the firing line. The Commission's documentation shows that children and youth were the dominant victims in all categories of gross human rights violations described in the Act. For almost every adult that was violated, probably two or more children or young people suffered. Children and young people were killed, tortured, maimed, detained, interrogated, abducted, harassed, displaced as well as being witnesses to these abuses.

Reference 933 - 0.01% Coverage

86 When considering the experiences of children under apartheid, it is important to remember that the Act provided for victims of defined gross human rights violations to testify and make statements to the Commission. This chapter therefore concerns the statements and testimonies of deponents who were defined as victims in terms of the legislation. This focus on victims is not, however, intended to diminish the active role of children and youth. Children were agents of social change and

Reference 934 - 0.01% Coverage

Psychological effects of exposure to gross human rights violations

Reference 935 - 0.01% Coverage

89 Whilst the Commission did not embark on psychological evaluations of people who made statements or gave testimony, deponents themselves often referred to the damaging psychological effects of gross human rights violations. Dee Dicks, who testified at the hearing in Athlone, was arrested and charged with public violence at the age of seventeen. She described her pain in her testimony to the Commission:

Reference 936 - 0.01% Coverage

18 See chapter on Consequences of Gross Human Rights Violations for more detail on psychological consequences 19 Pynoos R, D Kinzie & M Gordon (1998) 'Children, Adolescents and Families exposed to torture and related trauma', in National Institute for Mental Health.

Reference 937 - 0.01% Coverage

Physical consequences of gross human rights violations

Reference 938 - 0.01% Coverage

108 Disruption of education compromised the future potential of many children. Such disruptions were exacerbated by the negative economic effects that gross human rights violations have been reported to have on families. Of those statements in which parents reported a disruption to their children's education, 51 per cent also referred to losses of income as an outcome of violations.

Reference 939 - 0.01% Coverage

113 Wonder's case reflects the complex and multiple layers of abuse and human rights violations suffered by South Africa's youth. Wonder's education was disrupted prematurely. He was forced to leave his family, which he missed so much that he risked his life to see them again. This led to his being shot, detained and tortured – another trauma added to others he had experienced, such as the loss of his friends and relatives in the conflict. The constant pain of his wounded leg was a nagging reminder of the losses and suffering he had to endure. The cost of his sacrifice was exacerbated through comparison with his brother who completed his secondary education and was pursuing tertiary training.

Reference 940 - 0.01% Coverage

■ HOW THE GENDER HEARINGS CAME ABOUT 1 In March 1996, as the Commission commenced its hearings, the Centre for Applied Legal Studies (CALS) at the University of the Witwatersrand hosted a workshop entitled 'Gender and the Truth and Reconciliation Commission'. Participants included psychologists, lawyers, people from non-governmental organisations (NGOs), members of the Gauteng Legislature and representatives from each of the four regions of the Commission. The workshop resulted in an in-depth submission that discussed ways in which the Commission might be missing some of the truth through a lack of sensitivity to gender issues. The submission, as well as relying on discussion at the workshop, used material from in-depth interviews with women leaders who had suffered gross human rights violations.

2 The term 'gender' encompasses both women and men, and the social relations between them. The CALS submission unashamedly focused on women in the belief that it is the voices of women that more often go unheard. Further, while much of their discussion dealt with gross human rights violations as defined by the Commission, the submission also devoted some time to questioning the way gross human rights violations were understood, thereby masking the types of violations more commonly suffered by women.

Reference 941 - 0.01% Coverage

IMPORTANT: Some women testify about violations of human rights that happened to family members or friends, but they have also suffered abuses. Don't forget to tell us what happened to you yourself if you were the victim of a gross human rights abuse.

6 This chapter of the report focuses primarily on what was revealed during the special women's hearings. Women were by no means absent from other hearings of the Commission. Indeed, the CALS submission acknowledged that they were alerted to gender bias when they noticed that over half of those who spoke were women, but that the roles and capacities in which women and men spoke differed. They saw that, while the overwhelming majority of women spoke as relatives and dependants of those (mainly males) who had directly suffered human rights violations, most of the men spoke as direct victims. The figures below confirm that this pattern persisted over the full period of the hearings.

Reference 942 - 0.01% Coverage

Statements describing gross violation of human rights by sex of deponent OFFICE

Reference 943 - 0.01% Coverage

Deponents who were themselves victims of gross human rights violations Office

Reference 944 - 0.01% Coverage

Table 3: Women's reports of gross human rights violations by type of violation

Reference 945 - 0.01% Coverage

■ THE DEFINITION OF GROSS HUMAN RIGHTS VIOLATIONS

Reference 946 - 0.01% Coverage

17 To integrate gender fully, however, would have required the Commission to amend its understanding of its mandate and how it defined gross human rights violations. The Act states that

Reference 947 - 0.01% Coverage

'gross violation of human rights' means the violation of human rights through – (a) the killing, abduction, torture or severe ill treatment of any person; or (b) any attempt, conspiracy, incitement, instigation, command or procurement to commit an act referred to in paragraph (a).

18 The CALS submission argued that the definition of 'severe ill treatment' should be interpreted to include apartheid abuses such as forced removals, pass law arrests, alienation of land and breaking up of families. This approach finds support in the declaration to the Commission by five top judges at the legal systems hearing that apartheid was in and of itself a gross violation of human rights.³

Reference 948 - 0.01% Coverage

28 One can, however, overstate the case. The hearings provided ample evidence that women fulfilled all roles in the struggle and suffered the full range of human rights violations. There were stories of women active – and abused — in all three decades covered by the Commission. There were stories of and by women of all races and of all ages. In terms of educational level, the women ranged from those with limited formal education to others with tertiary degrees. Ms Lita

6 Goldblatt, B (1997), 'Violence, gender and human rights — an examination of South Africa's Truth and Reconciliation Commission' paper presented to the annual meeting of the Law and Society Association, St Louis, Missouri, pp 7-8.

Reference 949 - 0.01% Coverage

37 One of the silences was that of women who had themselves suffered gross human rights violations, but spoke only as secondary victims — as relatives of men who had suffered. Hence, for example, in the first week of hearings in the Eastern Cape, the widows of the Cradock Four spoke about their murdered husbands. Each had herself been arrested and harassed, but their own stories did not become the subject of the hearings. Later in the hearings, Dr Liz Floyd and Ms Nyameka Goniwe spoke about the abuses

suffered by their partners, Mr Neil Aggett and Mr Matthew Goniwe. They, too, mentioned their own roles and suffering only in passing.

Reference 950 - 0.01% Coverage

52 Given the close relationship between sex and gender, one of the more obvious differences in the way women and men might experience gross human rights violations is the extent to which they suffered from sexual violations, and the nature of those sexual violations. Of the 446 statements that were coded as involving sexual abuse, 398 specified the sex of the victim. Of these 158, or 40 per cent, were women. Rape was explicitly mentioned in over 140 cases.

Reference 951 - 0.01% Coverage

86 The Commission's conception of gross violations of human rights explicitly included mental or psychological torture in its definition of torture. Nevertheless, commenting on the first five weeks of hearings, Fiona Ross wrote that "the main focus has been on bodies and on the visible embodiment of suffering".¹⁹ It was not insignificant that psychologists were prominent among the CALS grouping and that the two opening addresses in the Cape Town women's hearings were by psychologists Ms Nomfundo Walaza and Ms Cheryl de la Rey.

Reference 952 - 0.01% Coverage

98 While torture, as defined by the Commission, occurs in prison or in custody – and is thus primarily perpetrated by agents of the state – there were also women who described gross violations of human rights which occurred outside of captivity, and which were perpetrated both by the state and others.

Reference 953 - 0.01% Coverage

138 At the human rights violation hearing in Port Elizabeth, Ms Ivy Gcina told of the kindness of her warder at North End Prison, a Ms Irene Crouse:

Reference 954 - 0.01% Coverage

144 The chapter suggests further that the definition of gross violation of human rights adopted by the Commission resulted in a blindness to the types of abuse predominantly experienced by women. In this respect, the full report of the Commission and the evidence presented to it can be compared to reports on South African poverty, which make it very clear that while women are not the only sufferers, they bear the brunt of the suffering.

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Analysis of Gross Violations of Human Rights

Reference 959 - 0.01% Coverage

1 The Committee on Human Rights Violations (the Committee) was established on 16 December 1995 at the first meeting of the Commission. It was composed of Archbishop Desmond Tutu (chairperson of the committee), Yasmin Sooka and Wynand Malan (vice-chairpersons), Alex Boraine, Mary Burton, Bongani Finca, Richard Lyster, Dumisa Ntsebeza, Denzil Potgieter and Fazel Randera.

2 At its first meeting, the Committee considered the appointment of ten additional committee members, as provided in the Promotion of National Unity and Reconciliation Act (the Act). Consideration was given to regional needs as well as the wish to ensure the broadest possible representation in terms of skills, culture, language, faith and gender. The following members were appointed to the Human Rights Violations Committee: Russell Ally, June Crichton, Mdu Dlamini, Virginia Gcabashe, Pumla Gobodo-Madikizela, Ilan Lax, Hugh Lewin, Yolisa (Tiny) Maya, Ntsikelelo Sandi, Joyce Seroke, and, in the final months, Mothofela Mosuhli.

3 The Committee met at an early date to discuss and begin to implement its duties and functions as laid down in the Act¹. It was guided by the underlying principles of compassion, respect and equality of treatment in all its dealings with people who were to be defined as "victims of gross violations of human rights".

4 Its first responsibility was to establish a mechanism by which the "complete picture" of gross violations of human rights was to be drawn. There were enormous expectations, from the public and also from within the Commission, that public hearings would be held which would expose a considerable part of this picture. It was even hoped that a first public hearing could be held as early as February 1996, but it soon became apparent that a great deal of preparatory work had to be done first. Looking back with the wisdom of hindsight from the perspective of July 1998, it is amazing that a public hearing was in fact achieved as early as April 1996.

1 See further, volume one, The Mandate and Administrative Report of the Human Rights Violations Committee. VOLUME 5 CHAPTER 1 Analysis of Gross Violations of Human Rights

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Reference 961 - 0.01% Coverage

2 As defined the chapter on Methodology in Volume One. VOLUME 5 CHAPTER 1 Analysis of Gross Violations of Human Rights

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18 The Commission devised a form, referred to as a 'protocol' or 'statement form', for recording the statements made to the Commission by people who believed they had suffered gross violations of human rights. It appointed and trained 'statement takers' to listen to the accounts related by such persons, and to record them in a manner which would facilitate their entry into the Commission's database.⁵

Reference 963 - 0.01% Coverage

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Reference 964 - 0.01% Coverage

23 After the statements had been taken and submitted to the information management team for entry onto the database, the Human Rights Violations Committee in the region would select a number of them for public hearing. The criteria used were:

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6 The designated statement taker programme is described in the chapter on Methodology in Volume One. VOLUME 5 CHAPTER 1 Analysis of Gross Violations of Human Rights

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25 The first human rights violations hearing took place in a context that was very antagonistic to the work of the Commission with threats coming, presumably, from the right-wing sector. There was a determined effort to silence the voices of the victims and to stop the Commission from exposing the atrocities that had taken place in the past. It came as no surprise at all when a telephone call from the local police reported that they had been telephoned to warn of a bomb in the East London City Hall which could explode at any time. The consideration of the safety of the public and the victims' families in particular weighed heavily on the Commission, and the deliberations were adjourned as police came in with snifferdogs to inspect the hall. There was no bomb. This experience reinforced the Commission's concern that stringent security measures needed to be maintained.

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7 See Administrative Report: Witness Protection Unit in Volume One. VOLUME 5 CHAPTER 1 Analysis of Gross Violations of Human Rights

Reference 968 - 0.01% Coverage

The impact of the Human Rights Violations hearings

28 For the eighteen-month period during which they were a major part of the work of the Human Rights Violations Committee, the hearings became the public face of the Commission. They captured the imagination of the public and attracted both praise and criticism. The focus on the suffering of individuals and the reminders of the reconciling aspects of mourning and of forgiveness were in some cases a deterrent to people who were unwilling to come forward to make statements. Thus, political activists did not regard themselves as 'victims' who needed to weep or to forgive or be forgiven, but rather as participants in the struggle for liberation, who had known they would suffer for their cause.

29 Furthermore, deponents who had made statements but who had not been invited to testify in public felt in some way that they had been overlooked. It required a great deal of effort to assure them that their statements would be equally carefully investigated, and that they would receive equal attention from the Human Rights Violations Committee in terms of making findings in their case.

Reference 969 - 0.01% Coverage

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Reference 970 - 0.01% Coverage

32 The public hearings were successful in two major aspects. They met one of the statutory objectives of the Commission, that of "restoring the human and civil dignity of such victims by granting them an opportunity to relate their own accounts of the violations of which they are the victims"; and, together with the public hearings of applications for amnesty, they revealed the extent of gross violations of human rights and made it impossible for South Africans ever again to deny that such violations had indeed taken place.

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38 The people who testified in public made up less than one-tenth of all the people who made statements. It is important to stress that all the statements received the same degree of attention by the Human Rights Violations Committee. In order to provide this attention, it became necessary to curtail the public hearings and focus on the mass of statements and on making findings in every case.

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42 The Human Rights Violations Committee relied extensively on the team of investigators to obtain corroborative evidence to substantiate the statements it received. A great deal of this work consisted of seeking documentary evidence – court records, inquest records, police occurrence books, prison registers, hospital or other medical records. All too often, this was not available: either the normal passage of time or deliberate concealment had led to its being destroyed. When such material could not be found, either the deponents themselves or witnesses had to be tracked down and statements obtained from them.

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47 The founding legislation spelt out the fairly circumscribed nature of human rights violations on which the Commission was to focus: "the violation of human rights

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through the killing, abduction, torture or severe ill-treatment of any person" emanating from the conflicts of the past and carried out or planned by any person acting with a political motive.¹¹ There were many challenges from outside the Commission about what this should include, and many debates within the Commission and the Human Rights Violations Committee.

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48 This definition limited the attention of the Commission to events which emanated from the conflicts of the past, rather than from the policies of apartheid. There had been an expectation that the Commission would investigate many of the human rights violations which were caused, for example, by the denial of freedom of movement through the pass laws, by forced removals of people from their land, by the denial of the franchise to citizens, by the treatment of farm workers and other labour disputes, and by discrimination in such areas as education and work opportunities. Many organisations lobbied the Commission to insist that these issues should form part of its investigations. Commission members, too, felt that these were important areas that could not be ignored. Nevertheless, they could not be interpreted as falling directly within the Commission's mandate.

49 The Commission recognised that these issues formed part of the broader context within which the specifically defined gross human rights violations had taken place. It sought to give attention to them by receiving submissions from a number of organisations that had been particularly concerned with these issues in the past.¹² These submissions made a valuable contribution to the section of the final report dealing with the broad context within which the gross violations of human rights took place, although they could not be considered as victim hearings. They gave depth to the larger picture, but they still excluded individuals from recognition and from access to reparations, and many people remained aggrieved.

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51 For example, many accounts spoke of the effects on people of teargas used by the security forces. It would be impossible to say that teargas used in the legitimate control of an unruly crowd constituted a gross violation of human rights. Yet teargas canisters hurled into a hall or a church, or a small room or vehicle, could do serious damage to the health of a young child or elderly person. In such cases, where the damage could be assessed, it could be found that the person had indeed suffered a gross violation of human rights.

52 The discussion about how to decide whether combatants in the political conflict could be defined as victims of gross human rights violations continued for many months. The final decision is also described in the chapter on The Mandate.

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58 Once all corroboration had been completed, the regionally based members of the Human Rights Violations Committee considered them and made 'pre-findings' in every case, deciding either that there was sufficient proof to find that a gross human rights violation had occurred, or that it had not. A 10 per cent sample of these pre-findings went through a national check, to ensure that regions were operating

on the same criteria so that the findings would be uniform, and also to double-check for possible mistakes.

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13 The volume of the report containing this section will appear during the course of 1999. VOLUME 5 CHAPTER 1 Analysis of Gross Violations of Human Rights

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CODING FRAME FOR GROSS VIOLATIONS OF HUMAN RIGHTS

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The task of the Commission is to identify those people who suffered gross violations of human rights, defined as KILLING, ABDUCTION, TORTURE and SEVERE ILL TREATMENT. In addition to these four, there is a fifth category, the ASSOCIATED VIOLATION. This has not been defined as a gross violation, yet it is important for the understanding it provides of the context in which violations could and did take place. Each of the five categories has several sub-headings, which explain how the violation took place. The categories of Human Rights Violations The table below shows the categories of human rights violations (HRV) with their definitions.

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ABDUCTION Abduction is when a person is forcibly and illegally taken away (for example, kidnapping). It does not mean detention or arrest. Arrest is not a gross violation of human rights (see associated violations).

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ASSOCIATED These are not gross violations of human rights, but

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Victims of gross violations of human rights

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The list which follows was taken from the database of the Truth and Reconciliation Commission (the Commission) on 30 August 1998. It contains the names of all those people who, by that date, had been found by the Commission to have suffered a gross violation of human rights. The cut-off date of 30 August was necessary in order that the list could be checked and prepared for inclusion in this report. If people do not find their name on this list, there is no cause for concern. There are thousands more names to come, because the process of making finding and of dealing with queries, reviews and appeals has continued beyond that date. In addition, there will be further victims of human rights violations who will be identified through applications for amnesty.

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TSHOKELA, Gladman Mzwandile VOLUME 5 CHAPTER 2 Victims of gross violations of human rights PAGE 102

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The immunity from criminal or civil proceedings that results from the granting of amnesty was one of the main reasons or grounds for opposition raised by direct victims of politically-motivated acts or their next of kin. One of the early legal challenges to the Commission was an attack upon the constitutionality of the amnesty provisions by the Azanian Peoples Organisations (AZAPO) and some prominent families who had suffered human rights violations at the hands of the security forces under apartheid. The Constitutional Court eventually decided this matter against the applicants, upholding the constitutionality of amnesty. This case is more fully discussed in the chapter on Legal Challenges in Volume One.

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25 Once all of the information and material had been obtained, it was taken into account in deciding whether the application would amount to a chamber matter or to a matter for public hearing. This was regulated by the provisions of the Act, which compelled the Committee to hear all applications concerning a gross violation of human rights (as defined), at public hearings and gave the Committee the discretion as to how it would deal with all other matters. In practice, most of the applications not involving gross human rights violations were dealt with in chambers.

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Consequences of Gross Violations of Human Rights

■ CONSEQUENCES OF GROSS HUMAN RIGHTS VIOLATIONS ON PEOPLE'S LIVES

1 The apartheid system was maintained through repressive means, depriving the majority of South Africans of the most basic human rights, including civil, political, social and economic rights. Its legacy is a society in which vast numbers of people suffer from pervasive poverty and lack of opportunities. Moreover, those who were directly engaged in the armed conflict (whether on the side of the state or of the liberation movements) suffered particular kinds of consequences.

Reference 1082 - 0.01% Coverage

3 When considering the consequences of gross human rights violations on people's lives, it is hard to differentiate between the consequences of overt physical and psychological abuses and the overall effects of apartheid itself. This makes it difficult to make causal links or to assume that violations are the result of a particular experience of hardship. In many instances, however, violations undoubtedly played the most significant role as, for example, when a breadwinner was killed or when the violation caused physical disabilities, affecting individual and family incomes.

4 It must also be remembered that human rights violations affect many more people than simply their direct victims. Family members, communities and societies themselves were all adversely affected. Moreover, the South African conflict had effects far beyond those who were activists or agents of the state; many victims who approached the Commission were simply going about their daily business when they were caught in the crossfire. Human rights violations can also trigger

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Reference 1083 - 0.01% Coverage

5 This chapter addresses some of the consequences of gross human rights violations that were reported to the Commission. It attempts to report on the patterns and trends in relation to psychological effects, physical consequences and how these have affected families and communities in South Africa. In order to obtain a full picture, it should be read in combination with the chapters on Children and Youth and Women.

Reference 1084 - 0.01% Coverage

8 It must be borne in mind that information generated from the sample reflects the consequences and expectations as expressed in the entire statement of the deponent and that the majority of statements do not reflect the experience of one individual only. Often deponents referred to a violation of a person or persons other than or in addition to themselves - for example, other family members, comrades and friends. A deponent might, for instance, refer to the death of her son, but highlight the consequences for her grandchild's education, her daughter's emotional state and her own financial situation. This reflects

the communal consequences of gross human rights violations and the ripple effects they have on families and communities.

Reference 1085 - 0.01% Coverage

1 Percentage figures have been rounded off. VOLUME 5 CHAPTER 4 Consequences of Gross Violations of Human Rights

Reference 1086 - 0.01% Coverage

■ PSYCHOLOGICAL CONSEQUENCES OF GROSS VIOLATIONS OF HUMAN RIGHTS

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13 Perpetrators of human rights violations used numerous tactics of repression, with both physical and psychological consequences. These found their expression in the killing, abduction, severe ill treatment and torture of activists, families and communities. Psychological damage caused by detention was not merely a byproduct of torture by state agents. It was deliberate and aimed at discouraging further active opposition to apartheid. Jacklyn Cock says:

Reference 1088 - 0.01% Coverage

3 American Psychiatry Association, 1994 in National Institute of Mental Health. VOLUME 5 CHAPTER 4 Consequences of Gross Violations of Human Rights

Reference 1089 - 0.01% Coverage

4 Cock, J 'Political Violence' in People and Violence in South Africa, Eds. B McKendrick and W Hoffman, Oxford University Press 1990
5 Human Rights Commission, 'Violence in Detention' in People and Violence in South Africa, Eds. B McKendrick and W Hoffman, Oxford University Press 1990
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Reference 1090 - 0.01% Coverage

20 Internationally, the best-documented psychological consequences of human rights violations relate to the effects of torture. Torture can lead to wide ranging psychological, behavioural and medical problems, including post-traumatic stress disorder whose symptoms include "re-experiencing of the traumatic event, persistent avoidance stimuli associated with the event and persistent symptoms of increased arousal not present before the traumatic event."⁶

21 Post-traumatic stress disorder is not, however, the only consequence of torture and human rights violations. Other problems include depression, anxiety disorders and psychotic conditions. The effects are multidimensional and interconnected, leaving no part of the victim's life untouched. Exposure to trauma can lead to sleep disorders, sexual dysfunction, chronic irritability, physical illness and a disruption of interpersonal relations and occupational, family and social functioning.

6 'Mental health consequences of torture and related violence' in National Institute of Mental Health, March 1998. VOLUME 5 CHAPTER 4 Consequences of Gross Violations of Human Rights

Reference 1091 - 0.01% Coverage

22 In many statements made to the Commission, deponents described symptoms of psychological disturbance. Although many deponents and victims referred to their symptoms, it was not possible to diagnose actual disorders or problems based on the statements and testimony at hearings. However, the following examples illustrate the kinds of psychological problems that resulted from gross human rights violations.

Reference 1092 - 0.01% Coverage

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Reference 1093 - 0.01% Coverage

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Reference 1094 - 0.01% Coverage

VOLUME 5 CHAPTER 4 Consequences of Gross Violations of Human Rights PAGE 132

Reference 1095 - 0.01% Coverage

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Reference 1096 - 0.01% Coverage

44 Many members of the state forces, both conscripts and career officials, also described their experiences of post-traumatic stress disorder. Some perpetrators may also be considered victims of gross human rights violations and there is a need to address their struggle to live with the consequences of their experiences and actions. Others found themselves caught up in and traumatised by situations over which they had no control. Mr Sean Callaghan told the Commission at the health sector hearing:

VOLUME 5 CHAPTER 4 Consequences of Gross Violations of Human Rights PAGE 134

Reference 1097 - 0.01% Coverage

12 See chapter on Institutional Hearings: Health VOLUME 5 CHAPTER 4 Consequences of Gross Violations of Human Rights

Reference 1098 - 0.01% Coverage

49 Mr Lennox Mbuyiseli Sigwela was paralysed during a police shooting and attack by Witdoeke vigilantes in Crossroads in 1986. Once the family breadwinner, he became dependent on family members. His situation provides an example of the interconnectedness of psychological, physical and economic consequences of human rights violations. At the KTC hearing, he told the Commission:

Reference 1099 - 0.01% Coverage

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Reference 1100 - 0.01% Coverage

14 See chapter on Institutional Hearings: Health. VOLUME 5 CHAPTER 4 Consequences of Gross Violations of Human Rights

Reference 1101 - 0.01% Coverage

■ PHYSICAL CONSEQUENCES OF GROSS VIOLATIONS OF HUMAN RIGHTS

Reference 1102 - 0.01% Coverage

16 Basoglu, M, J Jaranson, R Mollica, M Kastrup. 'Torture and it's consequences' in National Institute of Mental Health, 1998 VOLUME 5 CHAPTER 4 Consequences of Gross Violations of Human Rights

Reference 1103 - 0.01% Coverage

VOLUME 5 CHAPTER 4 Consequences of Gross Violations of Human Rights PAGE 139

Reference 1104 - 0.01% Coverage

VOLUME 5 CHAPTER 4 Consequences of Gross Violations of Human Rights PAGE 140

Reference 1105 - 0.01% Coverage

17 A hippo is an armoured personnel carrier. VOLUME 5 CHAPTER 4 Consequences of Gross Violations of Human Rights

Reference 1106 - 0.01% Coverage

VOLUME 5 CHAPTER 4 Consequences of Gross Violations of Human Rights PAGE 142

Reference 1107 - 0.01% Coverage

VOLUME 5 CHAPTER 4 Consequences of Gross Violations of Human Rights PAGE 143

Reference 1108 - 0.01% Coverage

20 A large, broad-bladed knife, used for cutting cane. VOLUME 5 CHAPTER 4 Consequences of Gross Violations of Human Rights

Reference 1109 - 0.01% Coverage

VOLUME 5 CHAPTER 4 Consequences of Gross Violations of Human Rights PAGE 145

Reference 1110 - 0.01% Coverage

21 Audrey Coleman of the Detainees Parents Support Committee, 12 June 1997. VOLUME 5 CHAPTER 4 Consequences of Gross Violations of Human Rights

Reference 1111 - 0.01% Coverage

22 Human Rights Commission, 'Violence in Detention' in People and Violence in South Africa, Oxford University Press, 1990

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Reference 1112 - 0.01% Coverage

VOLUME 5 CHAPTER 4 Consequences of Gross Violations of Human Rights PAGE 148

Reference 1113 - 0.01% Coverage

23 Interview with Marius Van Niekerk, part of submission to the Commission. VOLUME 5 CHAPTER 4 Consequences of Gross Violations of Human Rights

Reference 1114 - 0.01% Coverage

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Reference 1115 - 0.01% Coverage

VOLUME 5 CHAPTER 4 Consequences of Gross Violations of Human Rights PAGE 151

Reference 1116 - 0.01% Coverage

VOLUME 5 CHAPTER 4 Consequences of Gross Violations of Human Rights PAGE 152

Reference 1117 - 0.01% Coverage

VOLUME 5 CHAPTER 4 Consequences of Gross Violations of Human Rights PAGE 153

Reference 1118 - 0.01% Coverage

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126 Disability and illness affect the ability to work. People lose time and become ineffective at work, at school and in the household. Thus, illness causes undeniable loss to individuals, families, communities and the entire society.²⁴ Figures from the Commission's database revealed immense economic loss due to the perpetration of gross human rights violations. Twenty-nine per cent of deponents who made statements to the Commission reported a loss of income as a direct result of their violation. Fifty-four per cent of those who coped through the assistance of family members and friends also reported a loss of income because of the violation. These factors placed an additional burden on the extended family.

Reference 1119 - 0.01% Coverage

24 Rupp, A & E Sorel, 'Economic Models' in National Institute for Mental Health, March 1998. VOLUME 5 CHAPTER 4 Consequences of Gross Violations of Human Rights

Reference 1120 - 0.01% Coverage

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Reference 1121 - 0.01% Coverage

■ THE CONSEQUENCES OF GROSS VIOLATIONS OF HUMAN RIGHTS ON COMMUNITIES

Reference 1122 - 0.01% Coverage

26 Interview with Marius Van Niekerk, part of submission to the Commission. VOLUME 5 CHAPTER 4 Consequences of Gross Violations of Human Rights

Reference 1123 - 0.01% Coverage

consequent dislocation of communities. Resistance to forced removals generated fierce conflicts which resulted in grave human rights abuses as the state violently enforced its policies.

Reference 1124 - 0.01% Coverage

27 Testimony by Sarahline Joseph, Commission hearing in the Boland, 26 June 1996 VOLUME 5 CHAPTER 4 Consequences of Gross Violations of Human Rights

Reference 1125 - 0.01% Coverage

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Reference 1126 - 0.01% Coverage

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Reference 1127 - 0.01% Coverage

VOLUME 5 CHAPTER 4 Consequences of Gross Violations of Human Rights PAGE 161

Reference 1128 - 0.01% Coverage

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Reference 1129 - 0.01% Coverage

165 Much of the media and literature on human rights violations and its consequences published to date have focused on the urban areas. The Commission's human rights violation hearings and post-hearing workshops allowed for a unique insight into opposition, violations and consequences experienced in rural communities. In many ways, these have mirrored events at the national level.

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Reference 1130 - 0.01% Coverage

VOLUME 5 CHAPTER 4 Consequences of Gross Violations of Human Rights PAGE 164

Reference 1131 - 0.01% Coverage

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Reference 1132 - 0.01% Coverage

178 Vigilantism was also a feature in rural communities. In Zolani in Ashton, the Amasolomzi patrolled the streets as the henchmen of local councillors. Their unregulated activities resulted in many human rights violations. Mr Nthando Mrubata, who testified at the Worcester hearing, was a victim of the Amasolomzi: "It was due to the police and the vigilantes that I am now a cripple."

Reference 1133 - 0.01% Coverage

180 The consequences of these conflicts are extremely complex, with spiralling and contradictory implications. It is clear that gross human rights violations have ripple effects that extend beyond the individual into the heart of communities.

Reference 1134 - 0.01% Coverage

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182 Through apartheid, the white community retained political and economic power. The unequal distribution of resources meant that white communities benefited through well-served suburbs, accessible education, access to government and other employment opportunities and countless other advantages. Whilst only a minority of white people engaged in the direct perpetration of violence, many gross human rights violations were committed in order to retain these benefits.

Reference 1135 - 0.01% Coverage

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Reference 1136 - 0.01% Coverage

188 The majority of individual white South Africans did not actively engage in the perpetration of gross human rights violations. At the same time, they did not overtly resist the dehumanising system within which these violations took place. Some white South Africans have recognised their bystander complicity. This has generated a sense of guilt, shame or denial. At a post-hearing workshop, Ms Lesley Morgan, a white South African housewife, described these feelings:

Reference 1137 - 0.01% Coverage

191 This chapter has tried to assess the effects of thirty-four years of oppression and resistance. It has addressed some of the psychological and physical consequences of gross violations of human rights as reported to the Commission. The Commission heard testimony from a broad range of people, many of whom testified about violations experienced by others. Mothers, sisters, fathers, brothers, relatives and friends came forward to speak of their pain and anguish. Their testimonies spoke

Reference 1138 - 0.01% Coverage

Reference 1139 - 0.01% Coverage

1 During the period under review, the majority of South Africans were denied their fundamental rights, including the right to vote and the right to access to appropriate education, adequate housing, accessible health care and proper sanitation. Those who opposed apartheid were subjected to various forms of repression. Many organisations and individuals in opposition to the former state were banned and banished, protest marches were dispersed, freedom of speech was curtailed, and thousands were detained and imprisoned. This gave rise to tremendous frustration and anger amongst the disenfranchised. Soon, each act of repression by the state gave rise to a reciprocal act of resistance. The South African conflict spiralled out of control, resulting in horrific acts of violence and human rights abuses on all sides of the conflict. No section of society escaped these acts and abuses.

Reference 1140 - 0.01% Coverage

2 Victims of human rights abuses have suffered a multiplicity of losses and therefore have the right to reparation. Without adequate reparation and rehabilitation measures, there can be no healing or reconciliation.

Reference 1141 - 0.01% Coverage

4 The Promotion of National Unity and Reconciliation Act (the Act) mandates the Reparation and Rehabilitation Committee of the Commission to provide, amongst other things, measures to be taken in order to grant reparation to victims of gross human rights violations (see below).

Reference 1142 - 0.01% Coverage

the taking of measures aimed at the granting of reparation to, and the rehabilitation and the restoration of the human and civil dignity, of victims of violations of human rights.

Reference 1143 - 0.01% Coverage

11 The right of victims of human rights abuse to fair and adequate compensation is well established in international law. In the past three years, South Africa has signed a number of important international instruments, which place it under an obligation¹ to provide victims of human rights abuse with fair and adequate compensation. The provisions of these instruments, together with the rulings of those bodies established to ensure compliance with them, indicate that it is not sufficient to award 'token' or nominal compensation to victims. The amount of reparation awarded must be sufficient to make a meaningful and substantial impact on their lives. In terms of United Nations Conventions, there is well established right of victims of human rights abuse to compensation for their losses and suffering. It is important that the reparation policy adopted by the government, based on recommendations made by the Commission is in accordance with South Africa's international obligations. The reparation awarded to victims must be significant.

12 What follows is a brief review of international law in this regard. Universal Declaration of Human Rights² 13 Article 8 of the Universal Declaration of Human Rights stipulates that:

1 Once a treaty has been signed, a country is obliged, according to article 18 of the Vienna Convention on the Law of Treaties, to 'refrain from acts which would defeat the objects and purpose of such treaty'.

South Africa is therefore bound by the provisions and jurisprudence of those treaties it has signed. 2 The Universal Declaration of Human Rights has been accepted as customary international law.

Reference 1144 - 0.01% Coverage

16 The Human Rights Committee established under the Optional Protocol to the International Covenant on Civil and Political Rights to consider alleged breaches of the Covenant has considered a number of cases relating to the right to compensation arising from gross violations of human rights.⁴ In all these cases, it has been held that, where the state or any of its agents is responsible for killings, torture, abductions or disappearances, it is under a legal obligation to pay compensation to the victims or their families. The fact that, in the majority of instances, the Committee has used the term 'compensation' implies that the award to victims should be substantial.

Reference 1145 - 0.01% Coverage

3 Signed by South Africa on 3 October 1994. 4 See *Bleier v Uruguay* (Case No. 30/1978); *Camargo v Columbia* (case No. 45/1979); *Dermitt v Uruguay* (Case No. 84/1981); *Quinteros v Uruguay* (Case No. 107/1981); *Baboerem v Suriname* (Case Nos. 146/1983 & 148154/1983); *Muiyo v Zaire* (Case No. 194/1985). Scores more cases can be referred to. See generally the T Van Boven Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms, (Report submitted to the United Nations Commission on Human Rights, 2 July 1993). 5 Signed by South Africa on 29 January 1993.

Reference 1146 - 0.01% Coverage

tortured before the Convention had come into force. Despite this rather technical finding, the Committee stressed in its communication to the government of Argentina that it should, in order to comply with the spirit of the Convention against Torture, ensure that victims of torture receive "adequate compensation". This is another example of an international body requiring, not just token, but significant reparation to be made to victims of human rights abuse.

The Inter-American Conventions on Human Rights

18 The Inter-American Convention on Human Rights contains provisions that grant victims of human rights abuse a right to compensation. In the famous *Velasquez Rodriguez* case⁶, the Inter-American Court held that a state is under an obligation to "provide compensation as warranted for damages resulting from the violations [of the rights recognised by the Convention]". On numerous other occasions – most recently in 1992 with respect to the governments of Uruguay and Argentina – the Inter-American Court has reasserted its view that victims of human rights abuse are entitled to compensation .

Reference 1147 - 0.01% Coverage

19 The South African conflict produced casualties. Many people were killed, tortured, abducted and subjected to various forms of severe ill treatment. This not only destroyed individual lives, but also affected families, communities and the nation as a whole.⁸ As a result, the new South Africa has inherited thousands of people whose lives have been severely affected. If we are to transcend the past and build

national unity and reconciliation, we must ensure that those whose rights have been violated are acknowledged through access to reparation and rehabilitation. While such measures can never bring back the dead, nor adequately compensate for pain and suffering, they can and must improve the quality of life of the victims of human rights violations and/or their dependants.

Reference 1148 - 0.01% Coverage

6 Judgement, Inter-American Court of Human Rights, Series C. No. 4 (1988). 7 Inter-American Commission on Human Rights, Report No. 29/92 (October 2 1992); Inter-American Commission on Human Rights, Report No. 28/92 (October 2 1992). 8 See chapter on Consequences of Gross Human Rights Violations.

Reference 1149 - 0.01% Coverage

26 This is an individual financial grant scheme. It is recommended that each victim of a gross human rights violation receive a financial grant, according to various criteria, paid over a period of six years.

Reference 1150 - 0.01% Coverage

30 The Commission consulted with relevant government ministries in preparing its proposals for the establishment of community-based services and activities, aimed at promoting the healing and recovery of individuals and communities that have been affected by human rights violations.

Reference 1151 - 0.01% Coverage

32 These proposals include legal, administrative and institutional measures designed to prevent the recurrence of human rights abuses.

Reference 1152 - 0.01% Coverage

e reassurance of non-repetition: the strategies for the creation of legislative and administrative measures that contribute to the maintenance of a stable society and the prevention of the re-occurrence of human rights violations.

Reference 1153 - 0.01% Coverage

39 The Skweyiya Commission⁹ recommended that victims of "maltreatment during detention" should receive monetary compensation, appropriate medical and psychological assistance, assistance in completing interrupted education and compensation for property lost. The Motsuenyane Commission¹⁰ also recommended compensation to those who suffered human rights violations and assistance with medical expenses.

Reference 1154 - 0.01% Coverage

9 The 'Report of the Skweyiya Commission of Enquiry into complaints by former African National Congress prisoners and detainees', August 1992. 10 The 'Report of the Motsuenyane Commission of Enquiry into certain allegations of cruelty and human rights abuse against ANC prisoners and detainees by ANC members', August 1993.

Reference 1155 - 0.01% Coverage

62 Regional Human Rights Violations Committees made preliminary findings on victim statements gathered from their areas. Preliminary regional findings were considered by the national Human Rights Violations Committee and were either accepted or rejected. If the Human Rights Violations Committee found that a gross violation of human rights had occurred and was of the opinion that a person was a victim of such a violation, it referred the statement of the person concerned to the Reparation and Rehabilitation Committee. Moreover, if the Amnesty Committee granted amnesty in respect of any act and was of the opinion that a person was a victim of that act, it referred the identified individual to the Human Rights Violations Committee which, if it concurred, referred the matter to the Reparation and Rehabilitation Committee. In addition, if the Amnesty Committee did not grant amnesty for an act and was of the opinion that the act was a gross violation of human rights and that a person was a victim in the matter, it referred the matter to the Reparation and Rehabilitation Committee through the Human Rights Violations Committee.

Reference 1156 - 0.01% Coverage

68 The individual reparation grant is an acknowledgement of a person's suffering due to his/her experience of a gross human rights violation. It is based on the fact that survivors of human rights violations have a right to reparation and rehabilitation. The individual reparation grant provides resources to victims in an effort to restore their dignity. It will be accompanied by information and advice in order to allow the recipient to make the best possible use of these resources. Thirty-eight per cent of the Commission's deponents requested financial assistance to improve the quality of their lives. In addition, over 90 per cent of deponents asked for a range of services which can be purchased if money is made available – for example, education, medical care, housing and so on.

Reference 1157 - 0.01% Coverage

victims is based on the Commission's Human Rights Violations Statement as the only point of entry.

Reference 1158 - 0.01% Coverage

78 Symbolic reparation measures are aimed at restoring the dignity of victims and survivors of gross human rights violations. These include measures to facilitate the communal process of commemorating the pain and celebrating the victories of the past. Deponents to the Commission have indicated that these types of interventions are an important part of coming to terms with the past.

Reference 1159 - 0.01% Coverage

100 Victims and survivors of gross human rights violations have complex physical and emotional needs which can be most appropriately addressed by multi-disciplinary teams – taking cultural and personal preferences into account - at accessible local treatment centres. It is recommended that the Department of Health establish such centres.

Reference 1160 - 0.01% Coverage

101 Perpetrators and their families need to be reintegrated into normal community life. This is essential to create a society in which human rights abuses will not

Reference 1161 - 0.01% Coverage

104 Community members should be trained in a variety of skills to enable them to assist victims of human rights abuses. These should include crisis management, critical incident briefing, trauma awareness training, referral skills and knowledge of available resources.

Reference 1162 - 0.01% Coverage

106 The impact of gross human rights violations on the family is often underestimated. To address this issue, it is recommended that training programmes for health care workers, aimed at improving their skills in the family systems approach be instituted by the relevant ministries.

Reference 1163 - 0.01% Coverage

109 Specific accelerated adult basic education and training (ABET) programmes should be established to meet the needs of youth and adults who are semi-literate and have lost educational opportunities due to human rights abuses.

Reference 1164 - 0.01% Coverage

113 It is recommended that specific attention be given to establishing housing projects in communities where gross violations of human rights led to mass destruction of property and/or displacement. The appropriate ministry should put the necessary mechanisms in place.

Reference 1165 - 0.01% Coverage

114 One of the functions of the Commission is to make recommendations on institutional legislative and administrative measures designed to prevent the recurrence of human rights abuses in the future.¹⁶

Reference 1166 - 0.01% Coverage

c The national body should be headed by a National Director of Reparation and Rehabilitation, who will be advised by a panel or board of trustees, composed of appropriately qualified members from relevant ministries and human rights organisations.

Reference 1167 - 0.01% Coverage

5 In making its findings, the Commission drew on a wide range of evidence. Apart from over 21 000 statements on violations of human rights, it considered the

Reference 1168 - 0.01% Coverage

The former SADF was politically neutral whilst your Commission is highly politicised ... The governing party of the former government did not demonstrate interest in the former SADF. You really erred in your assumption, and the expectations you created in public, that the SADF was guilty of gross violation of human rights on a substantial scale.

15 In the light of the Commission's findings that the security forces, including the SADF, were responsible for the commission of gross violations of human rights on a massive scale, this statement seemed to the Commission to epitomise the overarching sense of denial which seems to have enveloped so many of those who were the leaders and beneficiaries of the former state.

Reference 1169 - 0.01% Coverage

17 The appearance of the African National Congress (ANC) national leadership before the Commission was marked by the fact that, in contrast to the National Party, it took collective responsibility for the human rights violations of its membership and dealt frankly with the Commission's questions. The ANC also made the reports of the various enquiries conducted into its alleged excesses at Quatro and elsewhere freely available to the Commission.

Reference 1170 - 0.01% Coverage

24 The repercussions of the IFP's opposition to the Commission are even more serious for its own members. If and when financial reparation is made available by the government to those that the Commission has found to be victims of human rights violations, only those very few IFP members who flouted their party's opposition and made statements to the Commission will qualify. This may well exacerbate existing tensions between IFP and ANC members in the region and, ironically, contribute to more bloodshed and violence.

Reference 1171 - 0.01% Coverage

25 The Commission was further disturbed by the fact that high-ranking office-bearers of the IFP visited the party's members in prison to persuade them not to apply for amnesty, for fear that their applications would reveal collusion by senior IFP leaders in gross violations of human rights. The Commission finds it difficult to accept that the IFP appeared willing to allow certain of its members to remain in prison in order to protect the leadership.

Reference 1172 - 0.01% Coverage

45 The Commission appealed against this decision to a full bench of the Cape High Court in June 1996. That Court held that, in the context of the objectives of the Commission and the limited time frame within which it had to complete its work, the Commission was not obliged to give prior notice to any person who might be implicated in a human rights violations hearing. It did, however, stipulate that

Reference 1173 - 0.01% Coverage

59 One of the reasons for this decision was the necessity to corroborate and verify allegations made to the Commission by victims of gross human rights violations, particularly in the light of the decision to pay financial reparations. Payment could be made only to those who had been clearly verified by the Commission

Reference 1174 - 0.01% Coverage

as being victims of gross violations of human rights. This left little time for proactive investigations into unsolved apartheid-era violations.

Reference 1175 - 0.01% Coverage

(a) facilitate and where necessary initiate or co-ordinate, inquiries into ... (iii) the identity of all persons, authorities, institutions and organisations involved in [gross violations of human rights]

Reference 1176 - 0.01% Coverage

66 In the light of the above and of the evidence received, the Commission is of the view that gross violations of human rights were perpetrated or facilitated by all the major role-players in the conflicts of the mandate era. These include:

Reference 1177 - 0.01% Coverage

67 Evidence before the Commission indicates that all of the above were responsible for gross violations of human rights – including killing, attempted killing, torture and severe ill treatment – at different stages during the mandate period and that, to varying degrees, such violations entailed deliberate planning on the part of the organisations and institutions concerned, or were of such a nature that the organisations are accountable for them.

Reference 1178 - 0.01% Coverage

71 In the first place, as argued in the chapter on The Mandate, the Commission followed the internationally accepted position that apartheid was a crime against humanity. Accordingly, it upheld and endorsed the liberation movements' argument that they were engaged in a just war. Further, the Commission was also guided by international humanitarian law, and specifically the Geneva Conventions, in its evaluation of the concept of a 'just war'. Just war does not legitimate the perpetration of gross violations of human rights in pursuit of a just end. Hence the Commission believes that violations committed in the course of a just war should be subjected to the same rigorous scrutiny as violations committed by

Reference 1179 - 0.01% Coverage

the former state. The Commission's position in this regard is clearly articulated in the chapter on The Mandate. A just cause does not exempt an organisation from pursuing its goals through just means. Moreover, the evidence shows that the perpetration of gross violations of human rights by non-state actors often took place in circumstances where they were acting in opposition to the official state ideology and the policy of apartheid. In this sense, it was the state that generated violent political conflict in the mandate period – either through its own direct action or by eliciting reactions to its policies and strategies.

Reference 1180 - 0.01% Coverage

73 Third, the Commission has always been violation driven. Its task in this respect was to identify those responsible for gross human rights violations. Having identified the former state and the IFP as undoubtedly responsible for the greatest number of violations, the Commission directed its resources towards the investigation of those bodies.

74 It would, however, be misleading and wrong to assign blame for the gross violation of human rights only to those who confronted each other on the political and military battlefields, engaged in acts of commission. Others, like the church or faith groups, the media, the legal profession, the judiciary, the magistracy, the medical/health, educational and business sectors, are found by the Commission to have been guilty of acts of omission in that they failed to adhere or live up to the ethics of their profession and to accepted codes of conduct.

75 It is also the view of the Commission that these sectors failed not so much out of fear of the powers and wrath of the state – although those were not insignificant factors – but primarily because they were the beneficiaries of the state system. They prospered from it by staying silent. By doing nothing or not enough, they contributed to the emergence of a culture of impunity within which the gross violations of human rights documented in this report could and did occur.

Reference 1181 - 0.01% Coverage

THE PREDOMINANT PORTION OF GROSS VIOLATIONS OF HUMAN RIGHTS WAS COMMITTED BY THE FORMER STATE THROUGH ITS SECURITY AND LAW-ENFORCEMENT AGENCIES.

Reference 1182 - 0.01% Coverage

78 As previously stated, the Commission's evidence indicates that the state – in particular its security agencies and affiliated policy and strategy formulation committees and councils (such as the SSC) – was responsible for the greatest number of gross violations of human rights committed during the thirty-four-year mandate period.

Reference 1183 - 0.01% Coverage

82 Deplorable and racist though this security policy was (and the Commission has made a finding declaring it to have been a gross violation of human rights), it did not at that time involve the systematic targeting of certain categories of political activists for killing by high echelons of state. Evidence placed before the Commission indicates, however, that from the late 1970s, senior politicians – as well as police, national intelligence and defence force leaders – developed a strategy to deal with opposition to the government. This entailed, among other actions, the unlawful killing, within and beyond South Africa, of people whom they perceived as posing a significant challenge to the state's authority.

83 Killing is the most extreme human rights violation. Any legally constituted state that executes people outside of its own existing legal framework enters the realm of criminality and must, from that point on, be regarded as unlawful.

Reference 1184 - 0.01% Coverage

CERTAIN MEMBERS OF THE SSC (THE STATE PRESIDENT, MINISTER OF DEFENCE, MINISTER OF LAW AND ORDER, AND HEADS OF SECURITY FORCES) DID FORESEE THAT THE USE OF WORDS SUCH AS 'TAKE OUT', 'WIPE OUT', 'ERADICATE', AND 'ELIMINATE' WOULD RESULT IN THE KILLING OF POLITICAL OPPONENTS. THEY ARE THEREFORE RESPONSIBLE FOR DELIBERATE PLANNING WHICH CAUSED GROSS VIOLATIONS OF HUMAN RIGHTS [IN TERMS OF SECTION 4(A)(IV) OF THE ACT].

THE COMMISSION THEREFORE FINDS THEM TO BE PERSONS INVOLVED IN THE GROSS VIOLATIONS OF HUMAN RIGHTS WHICH DID OCCUR AND, FURTHERMORE, THAT THE SSC WAS AN INSTITUTION INVOLVED IN GROSS VIOLATIONS OF HUMAN RIGHTS [IN TERMS OF SECTION 4(A)(III) OF THE ACT].

CERTAIN MEMBERS OF THE SSC (PARTICULARLY THOSE NOT DIRECTLY INVOLVED IN SECURITY MATTERS) DID NOT FORESEE THAT THE USE OF THESE WORDS WOULD RESULT IN KILLINGS, BUT NEVERTHELESS REMAIN POLITICALLY AND MORALLY ACCOUNTABLE FOR THE DEATHS THAT OCCURRED [IN TERMS OF SECTION 4(A)(V) OF THE ACT] FOR THE FOLLOWING REASONS. THEY FAILED TO EXERCISE PROPER CARE IN THE WORDS THEY USED; THEY FAILED PROPERLY TO INVESTIGATE KILLINGS THAT OCCURRED AND THEY FAILED TO HEED COMPLAINTS ABOUT ABUSE. THROUGH THEIR USE OF MILITANT RHETORIC, THEY ALSO CREATED A CLIMATE WHERE VIOLATIONS OF HUMAN RIGHTS WERE POSSIBLE. THEY ARE THEREFORE GUILTY OF 'OFFICIAL TOLERANCE' OF VIOLATIONS AND ARE ACCOUNTABLE FOR SUCH VIOLATIONS.

Reference 1185 - 0.01% Coverage

j Evidence made available to the Commission that the South African government armed, trained, financed and in other ways assisted foreign nationals to undertake military operations against neighbouring governments in violation of international law and the sovereignty of those states; and further that these domestically generated foreign wars and military operations resulted in the gross violation of the human rights of non-South African nationals on a vast scale.

Reference 1186 - 0.01% Coverage

accept that expenditure audited by it may have been incurred, or assets may have been acquired, from the relevant secret funds for the purpose of committing gross violation of human rights.

Reference 1187 - 0.01% Coverage

101 Arising from the above, and from evidence presented in Volume Two of this report, the Commission makes the following findings in respect of the state's involvement in gross violations of human rights during the period 1960–94:

Reference 1188 - 0.01% Coverage

- THE STATE – IN THE FORM OF THE SOUTH AFRICAN GOVERNMENT, THE CIVIL SERVICE AND ITS SECURITY FORCES – WAS, IN THE PERIOD 1960–94 THE PRIMARY PERPETRATOR OF GROSS VIOLATIONS OF HUMAN RIGHTS IN SOUTH AFRICA, AND FROM 1974, IN SOUTHERN AFRICA.

Reference 1189 - 0.01% Coverage

AS A CONSEQUENCE OF THESE FACTORS, THE COMMISSION FINDS THAT THE STATE PERPETRATED, AMONG OTHERS, THE FOLLOWING TYPES OF GROSS VIOLATIONS OF HUMAN RIGHTS IN SOUTH AND/OR SOUTHERN AFRICA:

Reference 1190 - 0.01% Coverage

102 Mr PW Botha presided as executive head of the former South African government (the government) from 1978 to 1984 as Prime Minister, and from 1984 to 1989 as Executive State President. Given his centrality in the politics of the 1970s and 1980s, the Commission has made a finding on the role of former the State President: DURING THE PERIOD THAT HE PRESIDED AS HEAD OF STATE (1978–1989), ACCORDING TO SUBMISSIONS MADE TO, AND FINDINGS MADE BY, THE COMMISSION, GROSS

VIOLATIONS OF HUMAN RIGHTS AND OTHER UNLAWFUL ACTS WERE PERPETRATED ON A WIDE SCALE BY MEMBERS OF THE FORMER SOUTH AFRICAN POLICE (SAP) AND THE FORMER SOUTH AFRICAN DEFENCE FORCE (SADF), AMONG OTHERS. SUCH VIOLATIONS INCLUDED:

Reference 1191 - 0.01% Coverage

- COVERT LOGISTICAL AND FINANCIAL ASSISTANCE TO ORGANISATIONS OPPOSED TO THE IDEOLOGY OF THE ANC AND OTHER LIBERATION MOVEMENTS BOTH WITHIN AND OUTSIDE OF SOUTH AFRICA, ENABLING THOSE ORGANISATIONS TO COMMIT GROSS HUMAN RIGHTS VIOLATIONS ON A WIDE SCALE WITHIN AND BEYOND THE BORDERS OF THIS COUNTRY;

Reference 1192 - 0.01% Coverage

- FAILED TO RECOMMEND TO THE GOVERNMENT THAT APPROPRIATE STEPS BE TAKEN AGAINST MEMBERS OF THE SECURITY FORCES WHO WERE INVOLVED IN OR WHO WERE SUSPECTED OF BEING INVOLVED IN GROSS VIOLATIONS OF HUMAN RIGHTS, THUS CONTRIBUTING TO THE PREVAILING CULTURE OF IMPUNITY;
- RECOMMENDED THAT THE GOVERNMENT IMPOSE STATES OF EMERGENCY, UNDER WHICH GROSS VIOLATIONS OF HUMAN RIGHTS COMMITTED AGAINST PERSONS OPPOSED TO THE GOVERNMENT INCREASED, AND ASSISTED THE GOVERNMENT IN THE IMPLEMENTATION OF THE STATES OF EMERGENCY;

Reference 1193 - 0.01% Coverage

AS A CONSEQUENCE, THE SSC CREATED A POLITICAL CLIMATE THAT GREATLY FACILITATED THE GROSS VIOLATION OF HUMAN RIGHTS, AND IN WHICH SUCH VIOLATIONS OCCURRED ON A WIDE SCALE. MR BOTHA WAS RESPONSIBLE FOR ORDERING FORMER MINISTER OF LAW AND ORDER ADRIAAN VLOK AND FORMER POLICE COMMISSIONER JOHAN VAN DER MERWE UNLAWFULLY TO DESTROY KHOTSO HOUSE IN JOHANNESBURG, (A BUILDING OCCUPIED BY ORGANISATIONS CONSIDERED BY BOTHA TO BE A THREAT TO THE SECURITY OF THE GOVERNMENT), THEREBY ENDANGERING THE LIVES OF PEOPLE IN AND AROUND THE BUILDING. THIS DECISION GREATLY ENHANCED THE PREVAILING CULTURE OF IMPUNITY AND FACILITATED THE FURTHER GROSS VIOLATION OF HUMAN RIGHTS BY SENIOR MEMBERS OF THE SECURITY FORCES.

FOR THE REASONS SET OUT ABOVE AND BY VIRTUE OF HIS POSITION AS HEAD OF STATE AND CHAIRPERSON OF THE SSC, BOTHA CONTRIBUTED TO AND FACILITATED A CLIMATE IN WHICH THE ABOVE GROSS VIOLATIONS OF HUMAN RIGHTS COULD AND DID OCCUR, AND AS SUCH IS ACCOUNTABLE FOR SUCH VIOLATIONS.

Reference 1194 - 0.01% Coverage

THE COMMISSION FINDS THAT THE BOMBING OF KHOTSO HOUSE CONSTITUTES A GROSS VIOLATION OF HUMAN RIGHTS.

Reference 1195 - 0.01% Coverage

THE COMMISSION FINDS THAT MR DE KLERK FAILED TO MAKE FULL DISCLOSURE OF GROSS VIOLATIONS OF HUMAN RIGHTS COMMITTED BY SENIOR MEMBERS OF GOVERNMENT AND SENIOR MEMBERS OF THE SAP, DESPITE BEING GIVEN THE OPPORTUNITY TO DO SO.

THE COMMISSION FINDS THAT HIS FAILURE TO DO SO CONSTITUTES MATERIAL NON-DISCLOSURE, RENDERING HIM AN ACCESSORY TO THE COMMISSION OF GROSS VIOLATIONS OF HUMAN RIGHTS.

Reference 1196 - 0.01% Coverage

THE WORK OF THE COMMISSION HAS SUFFERED AS A RESULT OF THIS WHOLESAL DESTRUCTION. NUMEROUS INVESTIGATIONS OF GROSS VIOLATIONS OF HUMAN RIGHTS WERE SEVERELY HAMPERED BY THE ABSENCE OF DOCUMENTATION. ULTIMATELY ALL SOUTH AFRICANS HAVE SUFFERED THE CONSEQUENCES, IN THAT THE PROCESS OF RECONCILIATION AND HEALING THROUGH A DISCLOSURE OF THE PAST HAS BEEN DELIBERATELY CURTAILED.

Reference 1197 - 0.01% Coverage

106 As has been stated above, the state was not acting alone in its strategies involving gross human rights violations. It had the active and passive support of numerous other elements in society. One of these was the white electorate which returned the National Party to power in one election after another. Others were the institutional creations of the apartheid system and the political parties that operated largely within these creations. The homeland or bantustan system gave rise to a set of semi-autonomous security and law-enforcement structures and such political groupings as the Inkatha Freedom Party.

107 So-called independent and semi-autonomous homelands emerged on the political landscape of South Africa in the 1970s and 1980s. From the outset, they were sites of steadily escalating resistance and repression. All forms of human rights abuse (torture, extra-judicial killings, unjustifiable use of deadly force etc) which occurred within so-called white South Africa were also found in the homelands arena. Indeed, such factors as a lack of public attention or scrutiny, little media interest and weak civil society structures, created an environment in the homelands that was even more conducive to gross violations of human rights than the wider South African society.

Reference 1198 - 0.01% Coverage

108 In consequence, human rights were grossly violated on a vast scale. The great majority of those who suffered human rights abuses in South Africa in the mandate period were the victims of black perpetrators, acting in many cases as surrogates for the South African government. Nowhere is this more true than in Natal and KwaZulu. It is for this reason that the IFP is the only homeland-based party and the KwaZulu Police (KZP) the only homeland security structure singled out by the Commission for specific findings.

Reference 1199 - 0.01% Coverage

THE ADMINISTRATIONS AND GOVERNMENTS THAT PRESIDED OVER THE VARIOUS HOMELANDS WERE, ACCORDINGLY, A CORNERSTONE OF THE STATE'S POLICY OF APARTHEID IN THAT THEY PURPORTED TO GRANT FULL POLITICAL, SOCIAL AND ECONOMIC RIGHTS TO BLACK CULTURAL AND LINGUISTIC GROUPINGS, BUT ONLY WITHIN DEFINED LIMITED GEOGRAPHIC AND ETHNICALLY EXCLUSIVE ENCLAVES. ECONOMICALLY, THEY REMAINED NON-VIABLE, WHICH LEFT THEM LITTLE CHOICE BUT TO COLLABORATE WITH THE SOUTH AFRICAN STATE ON SECURITY AND RELATED MATTERS, AND FUNCTION AS EXTENSIONS OF THAT STATE AND AS INSTRUMENTS OF ITS SECURITY FORCES. THIS DOES NOT, HOWEVER, EXONERATE THEM OR THEIR LEADERS FROM RESPONSIBILITY FOR THE GROSS VIOLATION OF HUMAN RIGHTS PERPETRATED IN THE HOMELANDS.

HOMELAND GOVERNMENTS IMPLEMENTED SYSTEMS OF RURAL LOCAL GOVERNMENT AND ADMINISTRATION WHICH LED TO WIDESPREAD ABUSES AND GROSS VIOLATIONS OF HUMAN RIGHTS, AS DID THE IMPLEMENTATION OF CIVIL CODES BY CHIEFS AND HEADMEN.

Reference 1200 - 0.01% Coverage

THE COMMISSION FINDS THE HOMELAND SECURITY FORCES ACCOUNTABLE NOT ONLY FOR THE GROSS HUMAN RIGHTS VIOLATIONS PERPETRATED BY THEIR MEMBERS BUT ALSO FOR THOSE PERPETRATED BY MEMBERS AND SUPPORTERS OF THE HOMELAND GOVERNMENTS' RULING PARTIES, AS A RESULT OF THE SECURITY FORCES' FAILURE TO ACT AGAINST SUCH MEMBERS AND SUPPORTERS. THAT FAILURE ENGENDERED A CLIMATE OF IMPUNITY THAT FACILITATED SUCH GROSS VIOLATIONS OF HUMAN RIGHTS.

AT A POLITICAL LEVEL, THE COMMISSION FINDS THAT ACCOUNTABILITY FOR THE GROSS HUMAN RIGHTS VIOLATIONS CITED ABOVE RESTS JOINTLY WITH THE SOUTH AFRICAN GOVERNMENT AND THE GOVERNMENTS OF THE HOMELANDS.

Reference 1201 - 0.01% Coverage

110 As stated above, gross violations of human rights occurred in all the homelands. In some, like Bophuthatswana, Ciskei, Transkei and KwaZulu, they occurred on a vast scale. There is, however, one significant difference between KwaZulu and the other three. In the latter, the perpetrators were almost invariably members of the homeland security forces. This was not the case in KwaZulu. Whilst the KwaZulu homeland's security arm, the KZP, committed large numbers of human rights violations, a far larger number of violations was committed by members, supporters and office-bearers of the IFP itself. It is for this reason that the IFP has been singled out for special attention.

Reference 1202 - 0.01% Coverage

and their security forces that dominated the political landscape, in KwaZulu it was Inkatha, renamed in 1990 to the Inkatha Freedom Party. The IFP dominated the KwaZulu government – both its executive and its bureaucracy – to the extent that the government and the IFP became interchangeable concepts. The organisation effectively ruled KwaZulu as a one-party state. It further used KwaZulu government resources and finances to fund its party political activities as well as actions constituting gross violations of the human rights of non-Inkatha persons.

Reference 1203 - 0.01% Coverage

117 The above incidents represent iconic events over the past twelve years in which IFP office-bearers, members and supporters were involved in acts of serious political violence. They do not purport to be a complete list of such incidents. However, the most devastating indictment of the role of the IFP in political violence during the Commission's mandate period is to be found in the statistics compiled by the Commission directly from submissions by victims of gross human rights violations. These established the IFP as the foremost perpetrator of gross human rights violations in KwaZulu and Natal during the 1990–94 period. Indeed, IFP violations constituted almost 50 per cent of all violations reported to the Commission's Durban office for this period, and over one-third of the total number of gross human rights violations committed during the thirty-four-year period of the Commission's mandate. The statistics also indicate that IFP members, supporters and office-bearers in KwaZulu and Natal were responsible for more than 55

per cent of all violations reported to the Commission's Durban office for the period between July 1993 and May 1994.

Reference 1204 - 0.01% Coverage

119 It must be noted here that, for much of the period in which the Commission was able to accept human rights violations statements, the IFP discouraged its members and supporters from making submissions to the Commission. The result is that only about 10 per cent of all statements taken in KwaZulu-Natal came from people linked to the IFP. The significant point is that the statistics derived from the Commission's database do not diverge from those published by other national and international bodies. All of these are consistent in identifying the IFP as the primary non-state perpetrator of gross human rights abuse in South Africa from the latter 1980s through to 1994.

Reference 1205 - 0.01% Coverage

DURING THE PERIOD 1982–94, THE INKATHA FREEDOM PARTY, KNOWN AS INKATHA PRIOR TO JULY 1990 (HEREINAFTER REFERRED TO AS "THE ORGANISATION") WAS RESPONSIBLE FOR GROSS VIOLATIONS OF HUMAN RIGHTS COMMITTED IN THE FORMER TRANSVAAL, NATAL AND KWAZULU AGAINST :

Reference 1206 - 0.01% Coverage

- CREATING A CLIMATE OF IMPUNITY BY EXPRESSLY OR IMPLICITLY CONDONING GROSS HUMAN RIGHTS VIOLATIONS AND OTHER UNLAWFUL ACTS COMMITTED BY MEMBERS OR SUPPORTERS OF THE ORGANISATION.

CHIEF MG BUTHELEZI SERVED SIMULTANEOUSLY AS PRESIDENT OF THE IFP AND AS THE CHIEF MINISTER OF THE KWAZULU GOVERNMENT AND WAS THE ONLY SERVING MINISTER OF POLICE IN THE KWAZULU GOVERNMENT DURING THE ENTIRE THIRTEEN-YEAR EXISTENCE OF THE KWAZULU POLICE. WHERE THESE THREE AGENCIES ARE FOUND TO HAVE BEEN RESPONSIBLE FOR THE COMMISSION OF GROSS HUMAN RIGHTS, CHIEF MANGOSUTHU BUTHELEZI IS HELD BY THIS COMMISSION TO BE ACCOUNTABLE IN HIS REPRESENTATIVE CAPACITY AS THE LEADER, HEAD OR RESPONSIBLE MINISTER OF THE PARTIES CONCERNED.

Reference 1207 - 0.01% Coverage

THE COMMISSION FINDS FURTHERMORE THAT THE DEPLOYMENT OF THE PARAMILITARY UNIT IN KWAZULU LED TO GROSS VIOLATIONS OF HUMAN RIGHTS, INCLUDING KILLING, ATTEMPTED KILLING AND SEVERE ILL TREATMENT.

Reference 1208 - 0.01% Coverage

IT IS THE FINDING OF THIS COMMISSION THAT IN 1990, SENIOR MEMBERS OF THE IFP CONSPIRED WITH SENIOR MEMBERS OF THE KZP TO ESTABLISH A HIT SQUAD IN ESIKHAWINI TOWNSHIP, TO BE DEPLOYED ILLEGALLY AGAINST PERSONS PERCEIVED TO BE OPPOSED TO THE IFP. THE HIT SQUAD CONSISTED OF 'CAPRIVI TRAINEES' AND MEMBERS OF THE KZP, AND ITS MEMBERS TOOK INSTRUCTIONS FROM SENIOR MEMBERS OF THE IFP AND OF THE KZP, FOR THE ELIMINATION OF POLITICAL ACTIVISTS AFFILIATED TO THE ANC AND COSATU AS WELL AS MEMBERS OF THE SAP WHO WERE NOT SEEN TO BE SUPPORTIVE OF THE IFP. THE DEPLOYMENT OF THE HIT SQUAD LED TO GROSS

VIOLATIONS OF HUMAN RIGHTS, INCLUDING KILLING, ATTEMPTED KILLING, ARSON AND SEVERE ILL TREATMENT. THE PERSONS ACCOUNTABLE FOR SUCH VIOLATIONS INCLUDE: PRINCE GIDEON ZULU, MS LINDIWE MBUYAZI, MR BB BIYELA, CAPTAIN L LANGENI, MR MZ KHUMALO, MR ROBERT MZIMELA, CHIEF MATHABA AND MR ROBERT MKHIZE.

Reference 1209 - 0.01% Coverage

ELECTORAL COMMISSION BY FORCE FROM HOLDING ELECTIONS WHICH DID NOT ACCOMMODATE THE IFP'S DESIRES FOR SELF-DETERMINATION. SUCH ARMED RESISTANCE WAS TO ENTAIL THE RISK OF UNLAWFUL DEATH AND INJURY TO PERSONS AND THUS CONSTITUTED A CONSPIRACY TO COMMIT GROSS VIOLATIONS OF HUMAN RIGHTS.

CONSEQUENTLY IT IS THE FINDING OF THIS COMMISSION THAT THE SPU PROJECT CONSTITUTED A GROSS VIOLATION OF HUMAN RIGHTS IN AS FAR AS IT ENTAILED DELIBERATE PLANNING ON THE PART OF THE INKATHA FREEDOM PARTY AND MEMBERS OF THE THEN KWA-ZULU GOVERNMENT AND POLICE FORCE. THE FOLLOWING INDIVIDUAL MEMBERS ARE ACCOUNTABLE FOR THE VIOLATIONS ARISING FROM THE SPU CAMP: MR PHILIP POWELL, CHIEF MG BUTHELEZI, GENERAL SM MATHE, CAPTAIN LEONARD LANGENI AND MEMBERS (NOT INDIVIDUALLY IDENTIFIED) OF THE KWAZULU LEGISLATURE AND CABINET WHO KNEW OF THE PROJECT'S UNLAWFUL AIMS AND SUPPORTED IT.

Reference 1210 - 0.01% Coverage

123 In the late 1980s and early 1990s, a number of Afrikaner right-wing groups became active in the political arena. They operated in a loose coalition intent on securing the political interests of conservative Afrikaners through a range of activities seemingly intent on disrupting the negotiations process then underway. Operating both within and outside of the negotiations process, members of these groups undertook actions which constituted gross violations of human rights.

Reference 1211 - 0.01% Coverage

THE COMMISSION FINDS THAT THE AFRIKANER VOLKSFRONT AND STRUCTURES OPERATING UNDER ITS BROAD UMBRELLA WERE RESPONSIBLE, BETWEEN APRIL 1993 AND MAY 1994, FOR GROSS VIOLATIONS OF THE HUMAN RIGHTS OF PERSONS PERCEIVED TO BE SUPPORTERS AND LEADERS OF THE ANC, SACP, UDF, PAC, NATIONAL PARTY AND OTHER GROUPS PERCEIVED NOT TO SUPPORT THE CONCEPT OF AFRIKANER SELF-DETERMINATION OR THE ESTABLISHMENT OF A VOLKSTAAT. TO THAT END, THE MOVEMENT'S POLITICAL LEADERS AND MILITARY GENERALS ADVOCATED THE USE OF VIOLENCE IN PURSUIT OF THE MOVEMENT'S AIMS AND/OR IN AN ATTEMPT TO MOBILISE FOR AN INSURRECTION.

Reference 1212 - 0.01% Coverage

BY VIRTUE OF THEIR LEADERSHIP POSITIONS IN THE MOVEMENT, THE COMMISSION FINDS THE FOLLOWING TO BE ACCOUNTABLE FOR THE GROSS VIOLATIONS OF HUMAN RIGHTS VIOLATIONS COMMITTED BY SUPPORTERS OF THE MOVEMENT: GENERAL CONSTAND VILJOEN, GENERAL PIETER GROENEWALD AND MR EUGENE TERREBLANCHE.

Reference 1213 - 0.01% Coverage

THE COMMISSION FINDS THAT A NETWORK OF SECURITY AND EX-SECURITY FORCE OPERATIVES, OFTEN ACTING IN CONJUNCTION WITH RIGHT-WING ELEMENTS AND/OR SECTORS OF THE IFP,

FOMENTED, INITIATED, FACILITATED AND ENGAGED IN VIOLENCE WHICH RESULTED IN GROSS VIOLATIONS OF HUMAN RIGHTS, INCLUDING RANDOM AND TARGETED KILLINGS.

Reference 1214 - 0.01% Coverage

132 Nonetheless, as indicated previously, the Commission drew a distinction between a 'just war' and 'just means' and has found that in terms of international conventions, the ANC and its organs (the National Executive Council, the National Working Committee, the Revolutionary Council, the Secretariat and its armed wing, MK, as well as the PAC and its armed formations Poqo and APLA, committed gross violations of human rights in the course of their political activities and armed struggles, for which they are morally and politically accountable.

133 The Commission also wishes to note that the fact that the Commission makes a more detailed finding and comments more extensively on the ANC than on the PAC should not be interpreted as suggesting that the Commission finds it to have been more responsible for gross violations of human rights than the PAC. This is not the case. Instead, what it reflects is the far greater degree of openness to the Commission of the ANC than the PAC. The ANC made two full submissions to the Commission, answered its questions on the exile camps and made available to the Commission its various enquiry reports into alleged human rights abuses in exile. By contrast, the PAC offered very little by way of information on any of its activities, including exile abuses, and supplied no documentation.

Reference 1215 - 0.01% Coverage

Our conference itself will be remembered by our people as a council of war that planned the seizure of power by these masses, the penultimate convention that gave the order for us to take our country through the terrible but cleansing fires of revolutionary war to a condition of peace. (OR Tambo, Tambo Speaks.) To the extent that the Motsuenyane Commission found that some detainees were maltreated and recommended that the ANC should apologise for these violations of their human rights, the ANC does so without qualification, within the context of the standards it sets for itself – standards it wishes our country to attain and maintain, now and in the future. (First ANC first submission to the Commission.)

Reference 1216 - 0.01% Coverage

136 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 landmines – 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 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.

Reference 1217 - 0.01% Coverage

WHILE 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.

Reference 1218 - 0.01% Coverage

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 CIVILIAN INJURY AND 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'S BAR AND 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-1980S 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 CAMPAIGN IN THE PERIOD 1985-87 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 VIOLATIONS OF HUMAN RIGHTS. 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 1980S 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.

Gross violations of human rights committed by the ANC in exile

137 The Commission has studied the reports of the Stuart, Skweyiya, Sachs and Motsuenyane commissions of enquiry appointed by the ANC, as well as that of the Douglas Commission, into various forms of human rights abuse in exile. It also took evidence both from alleged victims of abuse in the camps and from those

Reference 1219 - 0.01% Coverage

in positions of command or authority. The Commission has also heard evidence from the ANC on persons executed in exile for a variety of different offences. ON THE BASIS OF THE EVIDENCE AVAILABLE TO IT, THE COMMISSION FINDS THAT 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 FINDS 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 FINDS THAT THE HUMAN RIGHTS OF THE INDIVIDUALS SO AFFECTED WERE GROSSLY VIOLATED. LIKEWISE, THE COMMISSION FINDS THAT THE FAILURE TO COMMUNICATE PROPERLY WITH THE FAMILIES OF SUCH VICTIMS CONSTITUTED CALLOUS AND INSENSITIVE CONDUCT.

THE COMMISSION ALSO FINDS 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 ALLEGATIONS OF TORTURE AND SEVERE ILL TREATMENT, THE COMMISSION FINDS 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 1979–89. THE COMMISSION HAS TAKEN NOTE OF 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.

Reference 1220 - 0.01% Coverage

Gross violations of human rights committed by the ANC after its unbanning

Reference 1221 - 0.01% Coverage

- CONTRIBUTING TO A SPIRAL OF VIOLENCE IN THE COUNTRY THROUGH THE CREATION AND ARMING OF SELF-DEFENCE UNITS (SDUS). WHILST 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 INTO 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 HAS ACCEPTED POLITICAL AND MORAL RESPONSIBILITY FOR ALL THE ACTIONS OF ITS MEMBERS IN THE PERIOD 1960–94 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 IN THE MANDATE PERIOD.

Reference 1222 - 0.01% Coverage

FOR THE GROSS VIOLATIONS OF HUMAN RIGHTS COMMITTED BY THE MANDELA UNITED FOOTBALL CLUB. THE COMMISSION FINDS FURTHER THAT MRS MADIKIZELA-MANDELA HERSELF WAS RESPONSIBLE FOR COMMITTING SUCH GROSS VIOLATIONS OF HUMAN RIGHTS.

Reference 1223 - 0.01% Coverage

WHILE THE COMMISSION TAKES NOTE OF THE EXPLANATION TENDERED BY THE PAC THAT ITS ACTIVITIES IN THE EARLY 1960S 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:

Reference 1224 - 0.01% Coverage

Gross violations of human rights committed by the PAC during its armed struggle

Reference 1225 - 0.01% Coverage

and attacks in the townships, 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. THE COMMISSION FINDS THAT THE TARGETING OF CIVILIANS FOR KILLING WAS NOT ONLY A GROSS VIOLATION 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 OF 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.

Gross violations of human rights committed by the PAC against its own members
THE COMMISSION FINDS THAT NUMBERS 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.

Reference 1226 - 0.01% Coverage

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.

THE UDF FACILITATED SUCH GROSS VIOLATIONS OF HUMAN RIGHTS IN THAT ITS LEADERS, OFFICEBEARERS 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 TOO MUST THE MASS DEMOCRATIC 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:

Reference 1227 - 0.01% Coverage

- 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.

Reference 1228 - 0.01% Coverage

THE COMMISSION FINDS THAT, IN SEVENTY-SIX INCIDENTS, THE DECEASED WERE DELIBERATELY TARGETED BECAUSE OF THE FACT THAT THEY HELD POSITIONS WITHIN THE IFP. THE KILLINGS OF THE IFP OFFICE-BEARERS AMOUNT TO A SYSTEMATIC PATTERN OF ABUSE, ENTAILING DELIBERATE PLANNING, AND CONSTITUTE GROSS VIOLATIONS OF HUMAN RIGHTS FOR WHICH THE RESPECTIVE LOCAL STRUCTURES OF THE UDF, ANC AND MK ARE HELD ACCOUNTABLE.

Reference 1229 - 0.01% Coverage

151 The Commission sought and received a number of submissions from organisations representing specific sectors of civil society. These sectors, while generally not directly involved in gross violations of human rights, were structurally part of an overall system designed to protect the rights and privileges of a racial minority. Many, such as the media and organised religion, exerted immense influence, not least of which was their capacity to influence the ideas and morals of generations of South Africans. In a society organised not only along lines of race but of class as well, professional bodies representing lawyers and doctors were frequently seen to be the custodians of scientific knowledge and impartiality. As such, their failure to oppose the injustice around them vociferously and actively, contributed in no small way to an ethos and climate that supported the status quo and isolated those who did oppose injustice.

Reference 1230 - 0.01% Coverage

152 It should be noted that in almost every sector, complicity relates both to the continuing perpetuation of race-based systems and structures and to a failure to speak out against the gross violations of human rights occurring throughout the society.

Reference 1231 - 0.01% Coverage

155 Little evidence was found of the direct involvement of health professionals in gross violations of human rights. However, the health sector, through apathy, acceptance of the status quo and acts of omission, allowed the creation of an environment in which the health of millions of South Africans was neglected, even at times actively compromised, and in which violations of moral and ethical codes of practice were frequent, facilitating violations of human rights. THE COMMISSION THUS FINDS THAT: THE FORMER GOVERNMENT, AND MORE SPECIFICALLY THE DEPARTMENT OF HEALTH, FAILED TO PROVIDE ADEQUATE HEALTH CARE FACILITIES TO BLACK SOUTH AFRICANS. THE DEPARTMENT OF HEALTH, THE SADF, THE SAP AND PRISONS SERVICE FAILED TO PROVIDE ADEQUATE TRAINING, SUPPORT AND ETHICAL GUIDANCE TO HEALTH CARE PROFESSIONALS IN THEIR EMPLOY, THUS FREQUENTLY SUBJUGATING THE INTERESTS OF THE PATIENT/CLIENT TO THOSE OF THE STATE OR THE EMPLOYER.

Reference 1232 - 0.01% Coverage

TERTIARY INSTITUTIONS RESPONSIBLE FOR THE EDUCATION OF HEALTH PROFESSIONALS FAILED, WITHOUT EXCEPTION, TO ENSURE THAT STUDENTS ENGAGED WITH AND INTERNALISED ISSUES OF ETHICS AND HUMAN RIGHTS IN HEALTH CARE.

Reference 1233 - 0.01% Coverage

THE DENIAL OF TRADE UNION RIGHTS TO BLACK WORKERS CONSTITUTED A VIOLATION OF HUMAN RIGHTS. ACTIONS TAKEN AGAINST TRADE UNIONS BY THE STATE, AT TIMES WITH THE COLLUSION OF CERTAIN BUSINESSES, FREQUENTLY LED TO GROSS VIOLATIONS OF HUMAN RIGHTS.

Reference 1234 - 0.01% Coverage

157 State restrictions on the freedom of the media played an important role in facilitating gross violations of human rights. These restrictions grew in intensity until more than 100 laws controlled the right to publish and broadcast. Although not themselves a gross violation of human rights, the restrictions denied South Africans the right to a free flow of information and ideas. At their worst, particularly during the successive states of emergency after 1985, the restrictions amounted to

Reference 1235 - 0.01% Coverage

THE MANAGEMENT OF THE MAINSTREAM ENGLISH LANGUAGE MEDIA OFTEN ADOPTED A POLICY OF APPEASEMENT TOWARDS THE STATE, ENSURING A LARGE MEASURE OF SELF-CENSORSHIP. THE ROLE OF THE NEWSPAPER PRESS UNION – NOT LEAST CONCERNING SECURITY MEASURES – REFLECTS A WILLINGNESS BY THE MAINSTREAM MEDIA NOT TO DEAL WITH MATTERS THAT EXPOSED THE ACTIVITIES OF THE SECURITY FORCES. THE AFRIKAANS MEDIA, WITH RARE EXCEPTIONS, CHOSE TO PROVIDE DIRECT SUPPORT FOR APARTHEID AND THE ACTIVITIES OF THE SECURITY FORCES, MANY OF WHICH LED DIRECTLY TO GROSS VIOLATIONS OF HUMAN RIGHTS.

Reference 1236 - 0.01% Coverage

159 The Commission endorses the international position that children and youth under the age of eighteen are entitled to special protection from government and society. As the Commission's statistics have shown, the greatest proportion of victims of gross violations of human rights were youth, many of them under eighteen.

Reference 1237 - 0.01% Coverage

THE STATE, IN THE FORM OF THE SOUTH AFRICAN GOVERNMENT, THE SECURITY FORCES AND THE CIVIL SERVICES, WAS, IN THE PERIOD 1960–94, THE PRIMARY PERPETRATOR OF GROSS VIOLATIONS OF HUMAN RIGHTS AGAINST CHILDREN AND YOUTH IN SOUTH AFRICA AND SOUTHERN AFRICA. THE POLICY OF APARTHEID RESULTED IN THE DELIVERY OF INFERIOR, INADEQUATE EDUCATION TO BLACK CHILDREN AND DEPRIVED THEM OF THE RIGHT TO DEVELOP IN MIND AND BODY. THIS DEPRIVATION CONSTITUTES A VIOLATION OF HUMAN RIGHTS.

Reference 1238 - 0.01% Coverage

THE WAR BETWEEN THE ANC AND THE IFP DISPLACED LARGE NUMBERS OF YOUTH, LEAVING THEM HOMELESS. IN THIS RESPECT, THE STATE, THE ANC AND IFP ARE RESPONSIBLE FOR THE COMMISSION OF GROSS VIOLATIONS OF HUMAN RIGHTS.

THE FAILURE BY THE ANC AND THE IFP AFTER 1994 TO REINTEGRATE YOUTH TO ENABLE THEM TO BECOME VALUED MEMBERS OF SOCIETY AND TO DEVELOP A SENSE OF SELF-ESTEEM, HAS LED TO THEIR CRIMINALISATION AND CREATED THE POTENTIAL FOR FURTHER GROSS VIOLATIONS OF HUMAN RIGHTS.

Reference 1239 - 0.01% Coverage

161 Many of the statements made to the Commission by women detail the violations inflicted on others – children, husbands, siblings and parents – rather than what they themselves suffered. Undoubtedly the violation of family members had significant consequences for women. However, women too suffered direct gross violations of human rights, many of which were gender specific in their exploitative and humiliating nature. THE COMMISSION THUS FINDS THAT: THE STATE WAS RESPONSIBLE FOR THE SEVERE ILL TREATMENT OF WOMEN IN CUSTODY IN

Reference 1240 - 0.01% Coverage

THE STATE'S VILIFICATION OF CONSCRIPTS WHO REFUSED TO SERVE IN THE SADF BY LABELLING THEM "COWARDS AND TRAITORS" CONSTITUTES A VIOLATION OF HUMAN RIGHTS.

SOME CHURCHES (IN PARTICULAR MAINSTREAM AFRIKAANS CHURCHES) OPENLY SUPPORTED THE POLICY OF CONSCRIPTION, THUS CREATING A CLIMATE IN WHICH GROSS VIOLATIONS OF HUMAN RIGHTS COULD TAKE PLACE.

Reference 1241 - 0.01% Coverage

162 The findings outlined above, to a greater or lesser extent, touch all the major role-players who were party to the conflict that enveloped South Africa during its mandate period. No major role-player emerges unscathed although, as already stated, a distinction must be made between those who fought for and those who fought against apartheid. There are many who will reject these findings and argue that they fail

to understand the complexities and historical realities of the time, and of the motives and perspectives of those who perpetrated gross violations of human rights. In this regard it needs to be firmly stated that, while the Commission has attempted to convey some of these complexities and has grappled with the motives and perspectives of perpetrators in other sections of this report, it is not the Commission's task to write the history of this country. Rather, it is the Commission's function to expose the violations of all parties in an attempt to lay the basis for a culture in which human rights are respected and not violated. 163 It should also be noted – as will be obvious from the content above – that the Commission's findings have focused mainly on events and violations that occurred inside South Africa in the 1960–94 period. There are obvious and good reasons for that, but it represents something of a historical distortion. It is the view of the Commission that, in terms of the gross violations of human rights, most of these occurred not internally, but beyond the borders of South Africa, in some of the poorest nations of the world. It was the residents of the Southern African region who bore the brunt of the South African conflict and suffered the greatest number of individual casualties and the greatest damage to their countries' economies and infrastructure.

Reference 1242 - 0.01% Coverage

164 Finally, in the context of a society moving towards reconciliation, South Africans need to acknowledge this country's divided history and its regional burden; to understand the processes whereby all, citizens included, were drawn in and are implicated in the fabric of human rights abuse, both as victims and perpetrators – at times as both.

Reference 1243 - 0.01% Coverage

1 The Act governing the work of the Commission requires not only that it establish as complete a picture as possible of activities during the years falling under its mandate and that it identify perpetrators of gross human rights violations, but also that it establish the "antecedent circumstances, factors and context of [gross human rights] violations as well as the causes, motives and perspectives of the persons responsible".²

2 Who were the perpetrators and what 'made' them, moved them or contributed to their behaviour? It is essential to examine perpetrators as multi-dimensional and rounded individuals rather than simply characterising them as purveyors of horrendous acts. Building on the factual history presented in earlier chapters, and utilising research developed in relation to the Holocaust and other situations of sustained oppression that gave rise to systematic acts of gross human rights violations, this chapter attempts to explain why and how these violations transpired, as a basis for informing the debate concerning reconciliation and recommendations to prevent violations in future. A diagnosis of persons and institutions responsible for gross human rights violations is of paramount importance in seeking to prevent future gross human rights violations.

3 It could be argued that prevention is only effective in the early stages of the development of a culture of gross human rights violations, and that signs and symptoms of the 'syndrome' should be made known widely. Itzhak Fried³ has suggested that:

Reference 1244 - 0.01% Coverage

... but things happened which were not authorised, not intended, or of which we were not aware ... I have never condoned gross violations of human rights ... and reject any insinuation that it was ever the policy of my party or government.

Reference 1245 - 0.01% Coverage

25 Regarding questions about the brutal enforcement of labour, consumer and student boycotts that involved gross violations of human rights, the UDF submission argued that such acts should be seen against –

Reference 1246 - 0.01% Coverage

None of these unconventional projects was intended to lead to any gross violations of human rights ... but ... they did create an atmosphere conducive to abuses.

Reference 1247 - 0.01% Coverage

... because of the absence of normal checks and balances that would avoid misuse of these powers ... most cases of gross violations of human rights resulted from these practices and they had the serious additional effect of

Reference 1248 - 0.01% Coverage

55 The position of the Commission regarding accountability and responsibility is quite clear and was repeatedly stated by the chairperson of the Commission. While acts of gross violations of human rights may be regarded as demonic, it is counter-productive to regard persons who perpetrated those acts as necessarily demonic. The work of the Commission towards reconciliation would be useless if such a stance were to be upheld.

Reference 1249 - 0.01% Coverage

59 There is a final major area regarding the problem of perspective: the question of even-handedness in understanding perpetrators from the multiple and varied sides of the struggle. Perpetrators of gross violations of human rights came from all sides: the security forces, military conscripts, the liberation movements and their armed wings, Inkatha and the UDF, from askaris and kitskonstabels, from township vigilante groups, youth organisations, from torturers and assassination squads, from the farright, and from township crowds responsible for 'necklace' killings. It is probably not possible to provide a neat, tidy or exhaustive classification of perpetrators.

Reference 1250 - 0.01% Coverage

implemented such policies. We accept that our security legislation and the state of emergency created circumstances which were conducive to many of the abuses and transgressions against human rights ... We acknowledge that our implementation of unconventional projects and strategies likewise created such an atmosphere.

Reference 1251 - 0.01% Coverage

79 How did the purported idealism of the apparently righteous struggle of the Afrikaners for self-determination go wrong? Here again, not surprisingly, there are differing political perspectives. For Mr FW de Klerk, who repeatedly stated that he had no knowledge of NP or cabinet authorisation of gross human rights violations, things went wrong because:

Reference 1252 - 0.01% Coverage

Apartheid oppression and repression was therefore not an aberration of a wellintentioned undertaking that went horribly wrong. Neither was it, as we were told later, an attempt to stave off the 'evil of communism'. Its ideological underpinnings and the programmes set in motion constituted a deliberate and systematic mission of a ruling clique that saw itself the champion of a 'super-race'. In order to maintain and reproduce a political and social order which is premised upon large-scale denial of human rights, far reaching and vicious criminal, security and penal codes were necessary ... the system increasingly relied upon intimidation, coercion and violence to curb and eliminate the opposition that apartheid inevitably engendered.

Reference 1253 - 0.01% Coverage

139 The antidotes are simple and clear. Open, transparent, accountable government should remain a central priority. Academic freedom and freedom of the press should be inviolable principles. Security forces should be prised open; their operations, budgets and methods of training opened to public scrutiny. Nonaccountable vigilante groupings should be regarded with suspicion and concern. If atrocities thrive in the soil and climate of silence and secrecy, one must remove the conditions in which they flower. Much has already been effected through the new Constitution. More remains to be done to cultivate a climate favourable to human rights, in all social institutions.

Reference 1254 - 0.01% Coverage

140 Having considered the array of motives, perspectives and explanations outlined above, let us speculatively apply them in the case of two rather different forms of human rights abuses. Perpetrators' actions cannot necessarily be understood in terms of the same set of factors.

Reference 1255 - 0.01% Coverage

150 Since ideologies, discourses and language codes are the constituent grounds for social identities of difference, disparagement and disgust and for inter-group cleavages based on hostility, resentment, suspicion and revenge, these factors demand sharp vigilance and radical change. The various Commissions recently established provide a good start. The vigorous promotion of a culture of human rights, of equality and mutual respect in every sector, is of paramount importance. Particular attention needs to be given to language codes that promote, quite subtly, images of hatred, distance and disparagement between groups.

Reference 1256 - 0.01% Coverage

1 The Promotion of National Unity and Reconciliation Act (the Act) required the Truth and Reconciliation Commission (the Commission) to make recommendations with regard to the creation of institutions conducive to a stable and fair society and the institutional, administrative and legislative measures which should be introduced to prevent the commission of human rights violations.¹

Reference 1257 - 0.01% Coverage

3 These are followed by a series of recommendations related to specific areas of the public and private sectors that the Commission believes could assist in the consolidation of democracy and the building of a culture of human rights. Although separately itemised, all the recommendations in this chapter should be seen as part of a whole and as contributing to the quest for overall stability and peace in South African society. It is important to state explicitly that there is a need for sensitivity to the particular issues pertaining to women and children.

Reference 1258 - 0.01% Coverage

■ PREVENTION OF GROSS HUMAN RIGHTS VIOLATIONS IN THE FUTURE

14 One of the essential goals of the Commission was to ensure that there would be no repetition of the past. For reconciliation to have any chance of success, it is imperative that a strong human rights culture be developed. The Commission recognises, however, that for such a culture to become a reality, a number of simultaneous actions will have to take place. THE RECORDS OF THE COMMISSION'S PROCEEDINGS, THIS REPORT AND THE RECORDED AUDIO AND VIDEO TAPES OF THE PUBLIC HEARINGS FORM A RICH CONTRIBUTION TO THE PUBLIC MEMORY, AND SHOULD BE MADE AVAILABLE IN THE WIDEST POSSIBLE WAY. MUSEUMS WHICH CELEBRATE DIFFERENT ASPECTS OF THE PAST SHOULD BE ESTABLISHED AND MAINTAINED.

THE COMMISSION RECOMMENDS THAT GOVERNMENT ACCELERATE THE CLOSING OF THE INTOLERABLE GAP BETWEEN THE ADVANTAGED AND DISADVANTAGED IN OUR SOCIETY BY, INTER ALIA, GIVING EVEN MORE URGENT ATTENTION TO THE TRANSFORMATION OF EDUCATION, THE PROVISION OF SHELTER, ACCESS TO CLEAN WATER AND HEALTH SERVICES AND THE CREATION OF JOB OPPORTUNITIES. THE RECOGNITION AND PROTECTION OF SOCIO-ECONOMIC RIGHTS ARE CRUCIAL TO THE DEVELOPMENT AND SUSTAINING OF A CULTURE OF RESPECT FOR HUMAN RIGHTS.

Reference 1259 - 0.01% Coverage

IT WILL BE IMPOSSIBLE TO CREATE A MEANINGFUL HUMAN RIGHTS CULTURE WITHOUT HIGH PRIORITY BEING GIVEN TO ECONOMIC JUSTICE BY THE PUBLIC AND PRIVATE SECTORS. RECOGNISING THAT IT IS IMPOSSIBLE FOR THE PUBLIC SECTOR ALONE TO FIND THE RESOURCES REQUIRED TO EXPEDITE THE GOAL OF ECONOMIC JUSTICE, THE COMMISSION URGES THE PRIVATE SECTOR IN PARTICULAR TO CONSIDER A SPECIAL INITIATIVE IN TERMS OF A FUND FOR TRAINING, EMPOWERMENT AND OPPORTUNITIES FOR THE DISADVANTAGED AND DISPOSSESSED IN SOUTH AFRICA.

Reference 1260 - 0.01% Coverage

ONE FACTOR MILITATING AGAINST THE ESTABLISHMENT OF A HUMAN RIGHTS CULTURE IS THE HIGH INCIDENCE OF SERIOUS CRIME. SECURITY OF PERSON AND PROPERTY IS A FUNDAMENTAL HUMAN RIGHT. TO ADDRESS THE UNACCEPTABLY HIGH RATE OF SERIOUS CRIME, GOVERNMENT IS REQUESTED TO GIVE CONSIDERATION TO THE INTRODUCTION OF COMMUNITY POLICING AT ALL LEVELS AS A MATTER OF URGENCY.

ANOTHER BARRIER TO THE CREATION OF A HUMAN RIGHTS CULTURE IN SOUTH AFRICA IS THE EXTENT OF WIDESPREAD CORRUPTION IN BOTH THE PRIVATE AND PUBLIC SECTORS. IF THERE IS TO BE AN ENTHUSIASTIC RESPONSE BY THE GENERAL PUBLIC TO THE WAR AGAINST POVERTY AND CRIME, THERE HAS ALSO TO BE A CORRESPONDING RUTHLESS STAND AGAINST INEFFICIENCY, CORRUPTION AND MALADMINISTRATION AT EVERY LEVEL OF THE PUBLIC AND PRIVATE SECTORS.

Reference 1261 - 0.01% Coverage

Where human relations are strained by war, meaningful human rights enforcement requires constant vigilance, and an unyielding commitment to sanctions – no matter how worthy the cause for which one is fighting.²

Reference 1262 - 0.01% Coverage

WHERE AMNESTY HAS NOT BEEN SOUGHT OR HAS BEEN DENIED, PROSECUTION SHOULD BE CONSIDERED WHERE EVIDENCE EXISTS THAT AN INDIVIDUAL HAS COMMITTED A GROSS HUMAN RIGHTS VIOLATION. IN THIS REGARD, THE COMMISSION WILL MAKE AVAILABLE TO THE APPROPRIATE AUTHORITIES INFORMATION IN ITS POSSESSION CONCERNING SERIOUS ALLEGATIONS AGAINST INDIVIDUALS (EXCLUDING PRIVILEGED INFORMATION SUCH AS THAT CONTAINED IN AMNESTY APPLICATIONS). CONSIDERATION MUST BE GIVEN TO IMPOSING A TIME LIMIT ON SUCH PROSECUTIONS.

Reference 1263 - 0.01% Coverage

2 The report of the Motsuenyane Commission of Enquiry into certain allegations of cruelty and human rights abuses against ANC prisoners and detainees by African National Congress members, August 1993.

Reference 1264 - 0.01% Coverage

17 The Commission gave careful consideration to the possibility of lustration as a mechanism for dealing with people responsible for violations of human rights. As used in several Eastern European countries, lustration (from the Latin meaning to illuminate or to purify by sacrificing or purging) involves the disqualification of such persons from certain categories of public office, or their removal from office. Other international and South African commissions have commented on this matter. For example, the report of the Skweyiya Commission recommends

Reference 1265 - 0.01% Coverage

18 The current opinion in International Law is that lustration should be limited to positions in which there is good reason to believe that the subject would pose a significant danger to human rights, and that it should not apply to positions in private organisations.

Reference 1266 - 0.01% Coverage

20 Those who publish works for commercial sale which have drawn or will draw substantially upon the statements, testimony and submissions of victims of violations of human rights have a responsibility towards such victims. THE COMMISSION RECOMMENDS THAT A PORTION OF THE PROFITS DERIVED FROM SUCH PUBLICATIONS BE CONTRIBUTED TO THE PRESIDENT'S FUND FOR REPARATIONS AND REHABILITATION.

Promotion of a human rights culture

21 To enhance the development of a human rights culture, which is a cornerstone of reconciliation, the Commission recommends that: THE GOVERNMENT RECOMMIT ITSELF TO REGULAR AND FAIR ELECTIONS. THE GOVERNMENT RECOMMIT ITSELF TO OPEN, CLEAN AND TRANSPARENT GOVERNANCE. THE GOVERNMENT RE-EXAMINE THE REFORM AND STRENGTHENING OF STATE INSTITUTIONS IN ORDER TO REINFORCE THE PROTECTION OF HUMAN RIGHTS. CONSIDERATION SHOULD BE GIVEN TO

THE ESTABLISHMENT OF HUMAN RIGHTS BUREAUX IN GOVERNMENT MINISTRIES AND TO INCREASING THE RESOURCES GRANTED TO INDEPENDENT WATCHDOGS, ESPECIALLY THE OFFICE OF THE PUBLIC PROTECTOR.

HUMAN RIGHTS CURRICULA BE INTRODUCED IN FORMAL EDUCATION, SPECIALISED EDUCATION AND THE TRAINING OF LAW ENFORCEMENT PERSONNEL. THESE CURRICULA MUST ADDRESS ISSUES OF, AMONGST OTHERS, RACISM, GENDER DISCRIMINATION, CONFLICT RESOLUTION AND THE RIGHTS OF CHILDREN.

THE GOVERNMENT GIVE SERIOUS CONSIDERATION TO THE POSSIBILITY AND DESIRABILITY OF INCLUDING THE YOUTH, GENDER AND HUMAN RIGHTS COMMISSIONS IN A SINGLE HUMAN RIGHTS COMMISSION SO AS TO IMPROVE EFFICIENCY, CO-ORDINATION AND COST-EFFECTIVENESS; ALSO

Reference 1267 - 0.01% Coverage

AS THE WORK OF THE COMMISSION AND ITS REPORT ARE VITAL RESOURCES FOR HUMAN RIGHTS EDUCATION, GOVERNMENT ENSURE THAT THE CONTENTS OF THE REPORT ARE MADE AS WIDELY AVAILABLE AS POSSIBLE TO ALL SECTORS AND LANGUAGE GROUPS OF OUR COUNTRY. THIS COULD BE DONE IN PARTNERSHIP WITH CIVIL SOCIETY AND SHOULD INCLUDE AUDIO AND VIDEO TAPES, TO ENSURE THAT THOSE WHO CANNOT READ OR WRITE HAVE ACCESS TO THE REPORT.

Reference 1268 - 0.01% Coverage

22 The granting of reparation awards to victims of gross violations of human rights adds value to the "truth-seeking" phase by:

Reference 1269 - 0.01% Coverage

24 To build, protect and maintain a new human rights culture in line with the new dispensation in South Africa, the Commission recommends that: CORPORATE AND GOVERNMENT STRUCTURES COMMIT THEMSELVES TO THE TRANSFORMATION PROCESS WITH RENEWED VIGOUR. THE COMMISSION WELCOMES THE PRINCIPLES ENCAPSULATED IN THE EMPLOYMENT EQUITY ACT, WHILE RECOGNISING THE NEED FOR GOVERNMENT, BUSINESS AND LABOUR TO FIND VIABLE WAYS TO IMPLEMENT ITS PROVISIONS, PRIOR TO THE PROMULGATION OF THE ACT. THE PRINCIPLES OF AFFIRMATIVE ACTION AND EMPLOYMENT EQUITY ARE ESSENTIAL TO THE TRANSFORMATION PROCESS. TO FACILITATE THIS, TRAINING IN CAREER DEVELOPMENT AND PROFESSIONAL SKILLS FOR ALL SECTIONS OF SOUTH AFRICAN SOCIETY NEED TO BE GIVEN PRIORITY. SPECIAL ATTENTION, IN THIS REGARD, NEEDS TO BE GIVEN TO THE ERADICATION OF INEFFICIENCY AND THE PROMOTION OF A CULTURE OF HARD WORK AND HONESTY.

THE GOVERNMENT MUST ENSURE THAT THE RULE OF LAW, HUMAN RIGHTS PRACTICE, TRANSPARENCY, ACCOUNTABILITY AND THE ROOTING OUT OF CORRUPTION AND OTHER FORMS OF CRIMINALITY AT ALL LEVELS OF SOCIETY ARE SERIOUSLY ADDRESSED.

Reference 1270 - 0.01% Coverage

Services also makes it difficult to ensure that the moral and legal imperatives of law are implemented at the level of daily practice. The authority of prison officers and even that of heads of prisons tends, in practice, to derive from the prison hierarchy and an entrenched culture within which gross violations of human rights occurred in the past, rather than the norms of prison law, human rights law and the Constitution.

Reference 1271 - 0.01% Coverage

PRISON OFFICERS RECEIVE HUMAN RIGHTS TRAINING, AS A BASIC GUIDE FOR TREATMENT OF PRISONERS AND THE MANAGEMENT OF THE PRISON SYSTEMS.

Reference 1272 - 0.01% Coverage

PRISONERS RECEIVE TRAINING IN HUMAN RIGHTS AND NON-VIOLENT WAYS OF CONFLICT RESOLUTION.

Reference 1273 - 0.01% Coverage

RELIGIOUS COMMUNITIES ORGANISE CEREMONIES DESIGNED TO ENABLE PEOPLE TO ACKNOWLEDGE THEIR DIFFERENT LEVELS OF INVOLVEMENT IN THE HUMAN RIGHTS VIOLATIONS OF THE PAST. THESE SERVICES SHOULD BE HELD AT DENOMINATIONAL, ECUMENICAL AND INTER-FAITH LEVELS AND SHOULD BE ORGANISED LOCALLY, REGIONALLY AND NATIONALLY.

Reference 1274 - 0.01% Coverage

- THE EMPOWERMENT OF BLACK PEOPLE AND THOSE WHO HAVE SUFFERED GROSS VIOLATIONS OF HUMAN RIGHTS TO MOVE BEYOND 'VICTIMHOOD' IN REGAINING THEIR HUMANITY;

Reference 1275 - 0.01% Coverage

44 Limitations imposed by the Act forced the Commission to take the view that the loss of business and/or income as a result of a politically motivated act did not constitute a gross violation of human rights. However, in the course of our work, we became aware that such losses were significant. The Commission therefore recommends that: THE STATE CONSIDER SOME FORM OF COMPENSATION FOR PERSONS WHO LOST THEIR BUSINESSES OR OTHER MEANS OF INCOME DURING THE UNREST PERIOD OF THE 1980S AND 1990S, PARTICULARLY THOSE WHO WERE NOT INSURED AGAINST SUCH LOSS. SPECIAL ATTENTION SHOULD BE GIVEN TO THE PLIGHT OF BLACK BUSINESS PEOPLE WHO LOST THEIR ENTIRE MEANS OF INCOME AS A RESULT OF THE UNREST.

Reference 1276 - 0.01% Coverage

ALL PERSONNEL WITHIN THE JUSTICE SYSTEM (FROM CLERKS TO JUDGES) UNDERGO INTENSIVE TRAINING IN THE VALUES OF THE NEW SOUTH AFRICAN CONSTITUTION AND IN THE REQUIREMENTS OF INTERNATIONAL LAW AND STANDARDS, INCLUDING THE UNITED NATIONS BASIC PRINCIPLES ON THE INDEPENDENCE OF THE JUDICIARY. ONGOING TRAINING SHOULD INCLUDE SENSITISATION TO HUMAN RIGHTS PRINCIPLES, INCLUDING GENDER-SPECIFIC ABUSE AND APPROPRIATE RESPONSES. CARE MUST BE TAKEN THAT THE INDEPENDENCE OF JUDGES IS NOT COMPROMISED BY ANY TRAINING PROCESS.

Reference 1277 - 0.01% Coverage

TRAINING OF JUDGES BE CONDUCTED BY JUDGES TOGETHER WITH ACADEMIC INSTITUTIONS, RATHER THAN BY THE JUSTICE COLLEGE. JUDGES ALREADY TRAINED IN CONSTITUTIONAL AND HUMAN RIGHTS ISSUES SHOULD ASSIST WITH THE TRAINING.

Reference 1278 - 0.01% Coverage

LAW STUDENTS BE GIVEN A GREATER UNDERSTANDING OF HUMAN RIGHTS LAW AND MORE INTENSIVE TRAINING IN LEGAL ETHICS.

Reference 1279 - 0.01% Coverage

ALL POLICE OFFICERS BE IMBUED, THROUGH TRAINING AND THE INTRODUCTION OF A CODE OF ETHICAL PRACTICE, WITH AN ETHOS OF SERVICE IN A DEMOCRATIC STATE AND UNDER A CULTURE OF HUMAN RIGHTS.

Reference 1280 - 0.01% Coverage

56 The exposure of politically motivated human rights abuses has only been possible as a result of perpetrators coming forward and "blowing the whistle" on their organisations' activities. Similarly, if organised crime is to be combated, those involved in crime syndicates will have to come forward. This is only likely if such persons are assured of comprehensive witness protection.

Reference 1281 - 0.01% Coverage

63 The Commission's hearings into activities of the SADF showed that the secrecy with which the SADF operated provided the basis for operations and programmes that led to gross human rights violations. The Commission therefore recommends that:

Reference 1282 - 0.01% Coverage

64 The civil education programme that has been proposed in the Defence White Paper is a positive initiative to prevent future human rights abuses by members of the security forces and to encourage and instil an understanding of human rights values in the population at large. THE COMMISSION RECOMMENDS THAT THIS PROGRAMME BE IMPLEMENTED RIGOROUSLY.

65 The onus is on government to ensure that any members of the security forces found to have committed human rights abuses or engaged in criminal activity of any kind are decisively dealt with through the justice system.

Reference 1283 - 0.01% Coverage

SANDF nodal point. These problems of access have been detailed elsewhere in this report and have led the Commission to conclude that its research and investigation into the activities of the former SADF were insufficient and constrained by such lack of access. Commission investigations have, however, established that the former SADF, contrary to its submission to the Commission, was significantly involved in the perpetration of gross human rights violations.

Reference 1284 - 0.01% Coverage

68 The Commission found that members of the SAPS were responsible for a substantial proportion of human rights violations committed during its mandate period. These recommendations are based on the Commission's understanding of the role played by the South African Police (SAP) in the past and the concern that, despite all efforts to reform the SAPS and improve police performance, reports of torture, coerced confessions, deaths in custody and other human rights violations remain common occurrences. More than 370 deaths in police custody or as a result of police action were reported in the six-month period from April to September 1997. While reform within the SAPS is obviously essential, this must be accompanied by appropriate independent monitoring and proper accountability.

Reference 1285 - 0.01% Coverage

ALL POLICE OFFICERS BE IMBUED, THROUGH TRAINING AND THE INTRODUCTION OF A CODE OF ETHICAL PRACTICE, WITH AN ETHOS OF SERVICE IN A DEMOCRATIC STATE AND UNDER A CULTURE OF HUMAN RIGHTS.

Reference 1286 - 0.01% Coverage

HEALTH PROFESSIONALS ENGAGE IN "SELF-AUDITS" OF THEIR PROFESSIONAL CONDUCT BY MEETING REGULARLY IN SMALL FACILITATED GROUPS TO DISCUSS ETHICAL AND HUMAN RIGHTS DILEMMAS.

Reference 1287 - 0.01% Coverage

TRAINING IN HUMAN RIGHTS BE A FUNDAMENTAL AND INTEGRAL ASPECT OF ALL CURRICULA FOR HEALTH PROFESSIONALS. THIS TRAINING SHOULD ADDRESS FACTORS AFFECTING HUMAN RIGHTS PRACTICE, SUCH AS KNOWLEDGE, SKILLS, ATTITUDES, AND ETHICAL RESEARCH PRACTICES. KNOWLEDGE OF AND COMPETENCE AND PROFICIENCY IN THE STANDARDS (BOTH NATIONAL AND INTERNATIONAL) TO WHICH DOCTORS WILL BE HELD ACCOUNTABLE SHOULD BE A REQUIREMENT FOR QUALIFICATION AND REGISTRATION

Reference 1288 - 0.01% Coverage

CONTINUING MEDICAL EDUCATION PROGRAMMES INCLUDE A REVIEW OF HUMAN RIGHTS AND ETHICAL ISSUES AND DEVELOPMENTS.

Reference 1289 - 0.01% Coverage

83 In order to ensure that health professionals who work in situations in which they have dual loyalties are not complicit in committing human rights abuses, the Commission recommends that: APPROPRIATE ONGOING TRAINING IN INSTITUTIONAL HEALTH CARE AND HUMAN RIGHTS BE MANDATORY FOR ALL HEALTH PROFESSIONALS WORKING IN PUBLIC FACILITIES.

Reference 1290 - 0.01% Coverage

STANDARDS AND NORMS THAT UPHOLD HUMAN RIGHTS BE DEVELOPED FOR INSTITUTIONAL HEALTH CARE. THESE NEED TO BE PUT INTO OPERATION VIA REGULAR INDEPENDENT AUDITS.

Reference 1291 - 0.01% Coverage

AN AUDIT OF DISTRICT SURGEONS CURRENTLY EMPLOYED BY THE DEPARTMENT OF HEALTH BE CARRIED OUT, TO ENSURE THAT THOSE WHO PARTICIPATED IN OR COLLUDED WITH HUMAN RIGHTS VIOLATIONS IN THE PAST ARE NO LONGER IN A POSITION TO OFFER TREATMENT TO DETAINEES AND PRISONERS. (NOTE: THIS IS NOT A RECOMMENDATION THAT SUCH PEOPLE SHOULD NO LONGER BE ALLOWED TO PRACTISE, ONLY THAT THEY BE REMOVED FROM SITUATIONS IN WHICH THEY MIGHT BE VULNERABLE TO COLLUSION.)

Reference 1292 - 0.01% Coverage

COMPULSORY REFRESHER COURSES FOR PRISON HEALTH CARE WORKERS FOCUS ON ETHICS, MENTAL HEALTH ISSUES, HUMAN RIGHTS AND THE SPECIFIC HEALTH NEEDS OF PRISONERS.

Reference 1293 - 0.01% Coverage

THE STATUTORY COUNCILS GOVERNING THE HEALTH PROFESSIONS BE PROACTIVE IN PROMOTING HUMAN RIGHTS.

Reference 1294 - 0.01% Coverage

HEALTH CARE PROFESSIONALS WHO OPPOSE OR DRAW ATTENTION TO HUMAN RIGHTS ABUSES BE ACTIVELY SUPPORTED AND PROTECTED BY STATUTORY COUNCILS AND PROFESSIONAL ORGANISATIONS.

Reference 1295 - 0.01% Coverage

A BODY ON HEALTH AND HUMAN RIGHTS BE ESTABLISHED, CONSISTING OF HEALTH CARE PROFESSIONALS, HUMAN RIGHTS EXPERTS, CONSUMER REPRESENTATIVES AND LEGAL EXPERTS. THIS BODY COULD BE APPROPRIATELY LOCATED WITHIN THE HUMAN RIGHTS COMMISSION. IT SHOULD BE INDEPENDENT OF GOVERNMENT, PROFESSIONAL ORGANISATIONS AND STATUTORY COUNCILS, BUT WOULD OBVIOUSLY WORK IN CO-OPERATION WITH THESE.

Reference 1296 - 0.01% Coverage

- MONITORING INSTITUTIONAL HEALTH CARE;
- ADVISING ON CURRICULA IN HEALTH AND HUMAN RIGHTS EDUCATION;

Reference 1297 - 0.01% Coverage

- RECEIVING AND DEALING WITH REPORTS AND COMPLAINTS ABOUT HUMAN RIGHTS ABUSES IN THE HEALTH PROFESSIONS;

Reference 1298 - 0.01% Coverage

THIS BODY HAVE A MECHANISM TO ALLOW FOR ONGOING CONFIDENTIAL REPORTING OF HUMAN RIGHTS ABUSES BY HEALTH PROFESSIONALS.

Reference 1299 - 0.01% Coverage

THE PROFESSIONAL BODIES, STATUTORY COUNCILS, AND THE HEALTH AND HUMAN RIGHTS BODY (REFERRED TO ABOVE) MONITOR RESEARCH PRACTICES, ESPECIALLY AMONG VULNERABLE POPULATIONS WHOSE MEMBERS MAY BE UNAWARE OF THEIR RIGHTS.

Reference 1300 - 0.01% Coverage

a The Department of Health – national and provincial; b The statutory councils; c Professional organisations; d The SANDF; e Health science faculties; f The Human Rights Commission; g NGOs involved in health.

Reference 1301 - 0.01% Coverage

93 State restrictions on the freedom of the media played an important role in facilitating gross violations of human rights during the period covered by the Commission's mandate. While these restrictions were not in themselves a gross violation of human rights as defined in the Act, they denied South Africans the right to a free flow of information and ideas, and created conditions conducive to the perpetration of gross human rights violations by a range of forces. Laws and restrictions controlling the media created an atmosphere conducive to selfcensorship in the white-controlled media. As a result, most journalists failed to delve thoroughly enough into allegations that gross violations of human rights were occurring, or to speak out strongly enough when evidence was uncovered.

Reference 1302 - 0.01% Coverage

ALL COMMISSION RECORDS BE ACCESSIBLE TO THE PUBLIC, UNLESS COMPELLING REASONS EXIST FOR DENYING SUCH ACCESS, BEARING IN MIND THAT THE INDIVIDUAL'S RIGHTS TO PRIVACY, CONFIDENTIALITY AND RELATED MATTERS MUST BE RESPECTED. IN THIS REGARD, PARTICULAR ATTENTION NEEDS TO BE GIVEN TO THE RELEASE OR WITHHOLDING OF DETAILS OF HUMAN RIGHTS VIOLATIONS STATEMENTS IN CASES WHERE INDIVIDUALS FEEL THEIR SAFETY IS PREJUDICED.

Reference 1303 - 0.01% Coverage

NO STATE RECORDS PERTAINING TO HUMAN RIGHTS ABUSES BE DESTROYED WITHOUT THE EXPRESS APPROVAL OF THE NATIONAL ARCHIVIST, EVEN IF OTHER DISPOSAL AUTHORITIES AUTHORISE SUCH ACTION.

Reference 1304 - 0.01% Coverage

109 The Commission notes that, while the liberation movements were motivated by a just cause in the struggle against apartheid, they nevertheless committed gross violations of human rights both inside and outside of the country.

Reference 1305 - 0.01% Coverage

THE LIBERATION MOVEMENTS ISSUE A CLEAR AND UNEQUIVOCAL APOLOGY TO: • EACH VICTIM OF HUMAN RIGHTS ABUSES IN EXILE; • THOSE DETAINED WITHOUT TRIAL AND THOSE DETAINED, TRIED AND FOUND TO BE INNOCENT.

Reference 1306 - 0.01% Coverage

■ INTERNATIONAL HUMAN RIGHTS International human rights instruments 112 The Commission recommends that:

Reference 1307 - 0.01% Coverage

IN THIS ERA OF INTERNATIONAL CONCERN FOR HUMAN RIGHTS, IT IS NECESSARY TO EXAMINE WHETHER IT IS ACCEPTABLE FOR DESERTERS OR TRAITORS TO BE EXECUTED, EVEN IF THEY HAVE BEEN TRIED BY A TRIBUNAL. IT MUST BE BORNE IN MIND THAT IN MANY SUCH CIRCUMSTANCES IT IS NOT POSSIBLE FOR TRIBUNALS TO COMPLY WITH ALL THE PRESENT INTERNATIONAL REQUIREMENTS. MINIMUM ACCEPTABLE STANDARDS SHOULD BE DEvised, GOVERNING CONDITIONS OF DETENTION AND FAIR TRIALS. THE COMMISSION FOUND THE GENEVA CONVENTION AND ITS VARIOUS PROTOCOLS TO BE OF GREAT ASSISTANCE, BUT BELIEVES THERE IS STILL MORE THAT COULD BE ADDED.

Reference 1308 - 0.01% Coverage

113 The Commission received a number of statements from citizens of neighbouring countries, including Namibia, alleging that they had suffered gross violations of their human rights as a result of actions of representatives of the previous South African government. The Commission, lacking the resources and time to address such claims, has not made findings on such violations, nor is it recommending that reparations be paid to the victims. However, the Commission recommends that:

Reference 1309 - 0.01% Coverage

115 This chapter concludes where it began. Reconciliation is a process which is never-ending, is costly and often painful. For this process to develop, it is imperative that democracy and a human rights culture be consolidated. Reconciliation is centred on the call for a more decent, more caring and more just society. It is up to each individual to respond by committing ourselves to concrete ways of easing the burden of the oppressed and empowering the poor to play their rightful part as citizens of South Africa.

Reference 1310 - 0.01% Coverage

■ INTRODUCTION 1 The Commission sought to highlight the deep damage inflicted by past gross human rights violations on human relationships in South Africa. While the main conflict was between a state representing a white minority and an oppressed black population, the conflict found expression in various ways and involved different sections of the population, exploiting and creating divisions within and between communities. The young and the old, men and women, members of the same family or organisation, neighbours, different ethnic and racial groups often turned against each other. People were victimised in different ways and a range of gross human rights violations was committed. The result demands extensive healing and social and physical reconstruction at every level of society. Sometimes these different needs themselves compete with one another, leading to fresh conflicts. This makes reconciliation a complex, long-term process with many dimensions.

Reference 1311 - 0.01% Coverage

7 At a Commission hearing in Heideveld, Cape Town, Mr Lukas Baba Sikwepere was given the opportunity to relate, in his own language¹, his account of the human rights violations of which he had been a victim. During a political conflict in KTC (one of the informal settlements around Cape Town) on 31 December

1985, police allegedly began shooting at a number of people gathered around a police vehicle. I decided to walk, because I knew that if you run, you were going to be shot...When I arrived at the place – when I thought, now I am safe, I felt something hitting my cheek... I felt my eyes itching... I was scratching my eyes, I wasn't quite sure what happened to my eyes....

Reference 1312 - 0.01% Coverage

14 In June 1997, at the workshop that followed the human rights violation hearing in Sebokeng, Mr Duma Khumalo, representing Khulumani, expressed his appreciation of the Commission's contribution: We, as the Khulumani Support Group, the group that is mainly composed of victims based in the Vaal Triangle, would like to thank the Centre for Study of Violence for having considered the people of Vaal and, in that sense, having helped us to form this group that is existing today with a membership of more than 200 victims. I should say the Khulumani Support Group is very much aware of the objective of the [Commission], which is to promote healing, reconciliation and rehabilitation. We needed to consider the fear that was within the people in the Vaal Triangle of coming forward to tell of their experiences concerning the events and the incidents of the apartheid era. The [Commission] helped many of our people to break the shells of their griefs and fear that they had lived with in the past many years. It's the intervention of the [Commission] that brought about the dignity of the people that was lost during the political era in our country. People had no one to listen to their griefs or pay attention to some of those griefs until the establishment of [Commission] came into being. Then many of the victims came forward and started, for the first time, to talk about their past griefs... [edited]

Reference 1313 - 0.01% Coverage

18 There were also, of course, people who were critical of the human rights violations hearings. These included survivors, who demanded justice and retribution, and activists who saw themselves as heroes rather than victims. Some psychologists and others expressed concern that adequate professional support was not provided after the hearings. The latter view was voiced by Ms Thenjiwe Mtintso, former Chairperson of the Commission on Gender Equality and currently Deputy Secretary General of the ANC, at the Commission hearing on women in Johannesburg: I know, Chairperson, that the Truth Commission has got a programme of therapy, but I hope it can be sustained, because my own experience in the

Reference 1314 - 0.01% Coverage

19 A further cause of concern was the inevitably long delay between victims' testimony at hearings and the implementation by the state of the Commission's recommendations on reparations and rehabilitation. In a submission to the health sector hearing in Cape Town, Professor M Simpson, a psychiatrist specialising in post-traumatic stress disorder, raised a further concern: There has been far too little genuine debate about the nature of social healing and what surely promotes it. Truth is one essential component of the needed social antiseptic which could cleanse the social fabric of the systematised habit of disregard for human rights, but it needs to be an examined truth; it needs to be considered, thought about, debated and digested and metabolised by individuals and by society. Failure to comprehend recent suffering is too often, in the studies I have made, the seed of future suffering.

Reference 1315 - 0.01% Coverage

21 The ideas contained in the memorandum illustrate the official mindset at that time – frequently appropriated by the media and promoted by many who were themselves directly involved in perpetrating

gross violations of human rights. The guidelines provide some context for a statement by a mother of one of the seven activists killed in Gugulethu. After the second day of police testimony at the

Reference 1316 - 0.01% Coverage

22 After Mr Jacob Nombiba's testimony at the human rights violation hearing in Grahamstown on 7 April 1997, the chairperson, the Reverend Bongani Finca, captured this point as follows: We found that many parents are not aware whether their children died as heroes because at that time you couldn't go home and tell your parents what you were involved in. You did not want them to expect you to be shot and to be in jail. I think this is one of the important things in this Commission, that old people like you, at last, would find out the truth, the truth about the struggle of their children, because they did not tell them what was happening. What is important to me is that maybe the Commission will give out a report that will help you to go to your children's graves, to talk to your children – that you were not aware that they were fighting for their country – so that you can salute them.

Reference 1317 - 0.01% Coverage

Central to most of these testimonies [by ex-conscripts] is the notion that the present has destroyed the foundations of 'meaning' these conscripts adopted to cope with their traumatic experiences. It is easier to cope with having killed someone you believe to be the sub-human agent of forces that wish to destroy everything you hold dear than it is to cope with having killed a normal man, woman or child that history happened to cast as 'your enemy'. This crisis is greatly intensified when it is revealed to you that the person you have killed is a 'hero' or 'freedom fighter' or 'innocent civilian' – which the South African transformation correctly described him or her to have been. Most of these conscripts have, up until now, silently considered themselves victims (of neglect and manipulation) but are now publicly portrayed as perpetrators (of apartheid military objectives or even of gross human rights violations)... The Truth Commission has helped break the silence of past suffering, atrocities and abuses. In so doing, it has both released some traumatised ex-conscripts from the prison of silence and trapped them in the role of perpetrators of apartheid. For some, the contradictions of their experience might prove intolerable; for others, the process of revealing the truth about the past might allow them to confront and deal with their experiences.

Reference 1318 - 0.01% Coverage

28 The testimony of Ms Beatrice Sethwale on the death of her son, a black police officer, also drew attention to the difficult challenge of reconciliation within black communities: between those who fought against the apartheid system and those who were seen as 'collaborators' because they participated in state structures (black councillors) or helped to enforce the apartheid system (black police, 'kitskonstabels' 6). At the human rights violation hearing in Upington, Ms Sethwale said: On the 13th November 1985, it was a Wednesday morning. My son was driven out of the house by a crowd of people who were stoning the house. We were in the house, 405 Philani Street. He was driven out of the house, and shortly afterwards, he was killed and burnt. Briefly, what I would like to say is that the effect of my son's death has been great. I have been scarred by my son's death. Shortly afterwards, I had to remove my children from Upington, and I had to enrol them at schools elsewhere. In 1986 December, I went back to my home, and I tried to pick up the pieces of my life again. Thereafter, I had to hear from the people in the Paballelo community that I had shopped my son to the police, that I had betrayed him to the police and that I had been paid for doing so – that I had been paid for my child's murder.

Reference 1319 - 0.01% Coverage

29 A particularly complex healing process is involved in restoring trust where someone has been falsely accused of being a spy or an informer. In a number of cases, the Commission helped to restore the dignity of those who were thus falsely accused. This is illustrated by the testimony of Ms Evelina Puleng Moloko on the 'necklacing' of her sister, Maki Skosana, after the latter was suspected of being involved in the killing of a number of youths when booby-trapped hand grenades blew up in their hands. Ms Moloko told her story at the Duduza human rights violations hearing:

Reference 1320 - 0.01% Coverage

33 Reconciliation meant that perpetrators of gross human rights violations must be given the opportunity to become human again. Ms Cynthia Ngewu, whose son was killed by the police in the 'Gugulethu Seven' incident, confirmed this crucial insight. At the forum on Reconciliation, Reconstruction and Economic Justice in Cape Town on 19 March 1997, Ms Ngewu was asked how she saw the notion of reconciliation. She responded as follows: Ms Ngewu: What we are hoping for when we embrace the notion of reconciliation is that we restore the humanity to those who were perpetrators. We do not want to return evil by another evil. We simply want to ensure that the perpetrators are returned to humanity. Ms Pumla Gobodo-Madikizela: Many people in this country would like to see perpetrators going to prison and serving long sentences. What is your view on this?

Reference 1321 - 0.01% Coverage

34 Similar sentiments were echoed at the amnesty hearing of Mr Brian Gcina Mkhize, a former Inkatha Freedom Party (IFP) hit squad commander in the Esikhawini area on the KwaZulu-Natal north coast. Mr Mkhize was serving a life sentence for two murders. He applied, together with six other members of a Caprivi-trained hit squad, for amnesty for more than fifty-six incidents of violence. At the amnesty hearing in Richards Bay, Mr Mkhize drew attention to the need for the many IFP and ANC "foot soldiers" who committed gross human rights violations to "become human again": We represent IFP prisoners in reconciliation with ANC prisoners... There are a lot of people who are in prison who are responsible for actions similar to ours. But organisations today are not interested in those people. They are speaking about peace processes, but are not concerned about the foot soldiers who carried out these activities... We need counselling because this affects you mentally, psychologically. Nobody has come forth to suggest how we can get this counselling; how the element of criminality can be rooted out; how we can become human again.

35 Testimony to the Commission underlined the profound challenges faced by perpetrators and victims in the light of the violations perpetrators had committed against their fellow human beings. The restoration of their dignity would be a painful and difficult process. The following testimony was given at the gross human rights violations hearings in East London: Ms Bawuli Mhlawuli: After my father's death, we went back to Oudtshoorn. That's where my mother was teaching. There was this particular morning when we were all sleeping in one room... they would just kick it open you know, and my mother just thought there was nothing else she could do. She just went to open the door. She led them into the house, and as usual they came in and were searching for things that we didn't know. They came across one big poster titled 'Freedom Now' and they took it. And they saw some sympathy cards from people who were very sympathetic and sent the stuff from all over the world... This one policeman whose name was Kroeter,

Reference 1322 - 0.01% Coverage

38 Despite the terrible stories told by victims, the Commission heard some remarkable evidence of a willingness to forgive. At the human rights violations hearing at Beaufort West, Mr Alwinus Ndodiphela Mralasi made the following statement: Alwinus Mralasi: Thequewe Willie Manene was a member of the Methodist Church, and he accused me, together with his brother and another brother of his. I must tell you everything that I thought about him so that one could make a story out of this.

Reference 1323 - 0.01% Coverage

41 Mr Nundlal Rabilall gave testimony on the death of his brother, Krish, who died in Mozambique in the 1981 Matola cross-border raid. At the East London human rights violations hearing, he said: This had a traumatic effect on the entire family. I will briefly relate the effect it had on me, because it symbolises what – the same kind of effect it had on other members of the family. I became bitter towards white people, and the fact that the majority of them voted for the National Party election after election. I could never understand how they could sleep with an easy conscience at night, knowing that black children were dying in the homelands, when black people were given the most menial jobs, and that the Government they voted for used every conceivable kind of dirty trick and brutality to suppress the legitimate resistance of black people against the oppression of apartheid. In short, I became anti-white, and this attitude was reinforced by an incident I also had when I was travelling in a train to Durban. I had accidentally walked into a white compartment, and the white conductor came and swore at me, called me a 'coolie', and told me as soon as the train stops at the next station I must get into the next coach, which I had to do.

Reference 1324 - 0.01% Coverage

42 Mr Johan (Hennie) Smit gave testimony at the human rights violations hearing in East London:

Reference 1325 - 0.01% Coverage

44 At the Empangeni human rights violations hearing in November 1996, Ms J Msweli testified about the killing of her son, Simon Msweli:

Reference 1326 - 0.01% Coverage

46 At the Port Elizabeth human rights violations hearings, an unnamed witness testified: VOLUME 5
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Reference 1327 - 0.01% Coverage

human rights are starting to disassociate themselves with the acts of terror. And those people do that publicly because they are political figures, and they say they were not involved. But on the other hand, they call themselves committed Christians who are committed to nation building. We question that. Coming forward here with a submission as the sinned-against group is an explanation of what type of people we are as black people. We are notoriously forgiving and up against what the missionaries have been saying in statements that are written down in books, implied that we are a non-religious community. I want to say that we are more religious than many a nation. It is because we are notoriously religious that we are notoriously forgiving. So said Dr Weli Mazamisa. In conclusion, I want to say again that we are more than just religious. We are a peace-loving people and, if the Bible says, "blessed are the peacemakers", we might have had so many blessings if and only if these people will come forward. The people we want to make peace with are not coming to tell us what they have done so that at least we can

forgive them. Please people, we need to be blessed by God for the peace, but they are deciding to run away. They are not just running away with themselves, but they are running away with our long overdue blessings. We want our blessing please. People we urge you to bring back our blessings. I thank you Mr Chairman.

48 Testimony at the Alexandra human rights violations illustrated that forgiveness is not cheap, and the journey towards overcoming deep feelings of anger and humiliation is a long one: Ms Margaret Madlana: After my child's death, these white policemen came, and they came to one house where there was a tent, and they were running after some children. The children ran towards the house, and got into the house. When they arrived and entered the house I asked them (I didn't know that they understood Zulu and I asked in Zulu) what are they looking for because they have already killed my son. And one of the white men answered me, and he said to me, we are looking for the young kids. There were so many people in my house, and they [the police] said they are going to take me and kill me in the house. However, the people tried to ask them not to kill me ... I would like to apologise before God ... if ever I was to be employed, I was going to poison the white man's children. The way they killed my son hitting him against a rock, and we found him with a swollen head. They killed him in a tragic manner, and I don't think I will ever forgive in this case, especially to these police who were involved, and who were there ...

Reference 1328 - 0.01% Coverage

49 The Commission heard acknowledgements from a range of individuals and representatives of various institutions about their direct and/or indirect involvement with gross human rights violations. Many offered unqualified apologies for their acts of commission and/or omission and asked for forgiveness. The response of others was qualified. In the process, the role of sincere apologies in the reconciliation process emerged. While insincere apologies add insult to injury, honest apologies encourage forgiveness by "helping to pour balm on the wounds of many"¹⁰.

Reference 1329 - 0.01% Coverage

This past week, we met in Burgersdorp to do what we call a reconciliation service where we were going to cleanse ourselves of the past deeds. We'd slaughter a goat and cleanse ourselves with the blood that is shed. In a symbolic sense we'd cleanse ourselves of the wrong deeds, even if they were justifiable... The following were acknowledged. That we as the Inter-Church Youth or the church within the youth have, in one way or the other, killed people or at least were involved in the process of killings. That we were involved in demolishing people's property... That we informed on others who ended up being tortured severely and who died in the process. We watched hopelessly whilst people were being 'necklaced'. If we didn't do the 'necklacing', we would have gone to buy petrol, arrange tyres and be part of making petrol bombs etc. We were part of this as the church youth. One needs to emphasise that this was justifiable for the cause of the liberation of ourselves. We want to say we believe that 70 to 80 per cent of the young people who died during the period of the struggle, most of them were church going youth or were young people who believed in Christ, or who were baptised in the name of the Father, the Son and the Holy Spirit as it were. These people were all disappointed by the church. We are here to say that we take full responsibility for any human rights violations committed by our members. To families who

Reference 1330 - 0.01% Coverage

54 At the human rights hearing in Upington, on 2 October 1996, local community leader and minister Aubrey Beukes apologised to the mother of the murdered municipal constable, Lukas 'Jetta' Sethwale (see above): We were silent on the pain of the mother, the family of Jetta. As someone actively involved in

campaigning for the release of the Uppington 14 (those sentenced to death), I would like to say to Ms Sethwale and the family of Jetta: please forgive us that we allowed you to suffer in silence amid all the media attention. We were all victims. Forgive us the times when we drove past your house, showing journalists and foreign people where Jetta stayed and telling them our stories, and not inviting them to make some time to listen to your pain.

55 A spokesperson for the Stellenbosch Presbytery of the Dutch Reformed Church made the following statement at the human rights violations hearing in Paarl: [We] are not doing this presentation on behalf of the Dutch Reformed Church – only the Synod has this right to do this. But what we are doing here this afternoon is the deepest conviction of the Presbytery of Stellenbosch ... In looking back, we realise that there have been times in the history of Stellenbosch when we as a Presbytery (and also as separate congregations) either failed wholesale or made only the most timid of efforts to fulfil the prophetic responsibility the Lord has given us. We think especially of the past forty years during which the official policy of apartheid radically impaired the human dignity of people all around us and resulted in gross violations of human rights. Within the borders of our Presbytery, there were those who actively developed and defended the ideological framework by which these violations and actions were justified. At times, standpoints and decisions taken within this Presbytery itself functioned within this ideological framework.

Reference 1331 - 0.01% Coverage

When forced removals were carried out in our town, when people were forced to leave their historic neighbourhoods and had to resettle elsewhere, little or no protest was voiced by the Presbytery. These removals constituted a violation of human rights, which invariably went hand in hand with severe personal trauma, financial loss and social disruption. Tragically, as a result of the great separation brought about in South Africa by apartheid, we of the Presbytery often were not even aware of this suffering.

Reference 1332 - 0.01% Coverage

In terms of the way forward, there is much that we have done to make sure that the wrongs perpetrated in the past by doctors can never occur again, but there is much that remains to be done. We intend to participate fully in the work of the proposed over-arching Health and Human Rights Organisation. We propose to enlarge and to strengthen the office and the activities of our ombudsman, our public protector. Our peer review system has already been sharpened and structured much more effectively than it ever was before. We are currently engaged in a programme designed to promote structured ethics education in all the medical schools in this country, and we are planning formal structured training for prisons' health service personnel. However, in all these efforts, we still find ourselves hampered by the huge baggage of past wrongs that the Association has had to drag along with itself and from which it has found it impossible to free itself. It will only be through the process of truthful disclosure and reconciliation that we will finally be freed from the burden of this baggage.

Reference 1333 - 0.01% Coverage

Then we look at the lack of critical evaluation of policies – another major mistake that was committed and that was one of omissions. No moral and economic objections to apartheid were lodged for many years. At the time, there was sufficient appreciation for the hardship and suffering caused by the policy. Whether those hardships were shacks being demolished in the wet and cold of the Cape winter, or of people being shot whilst protesting or the consequences of bombs which killed civilians in Church Street in Pretoria as part of the struggle against apartheid – all of which was seen on our TV screens – the AHI could not have escaped the impact of these policies. [Point] 5.3 [of the submission] deals with insensitivity into issues

involving human rights, although there were frequent references at AHI conferences to the importance of good labour relations, training, proper wages and productivity. There was for many years an acceptance of the absence of a proper labour relations law that makes provision for workers' rights for all and of the lack of training and other discriminatory measures. This is also regrettable. There was

Reference 1334 - 0.01% Coverage

66 At the human rights violation hearing in Port Elizabeth, veteran activist and ANC MP Cikizwa Ivy Gcina gave harrowing testimony on her torture in detention in 1985. Ms Gcina also had praise for a warder at North End Prison, Ms Irene Crouse:

Reference 1335 - 0.01% Coverage

85 Links gave testimony at the human rights violations hearing in Upington on 2-3 October 1996. He related that he was congratulated by his superiors for his first murder and offered further lethal weapons and one hundred rounds of ammunition. This only had the effect of making him feel extremely guilty, especially since the victim was so young.

Reference 1336 - 0.01% Coverage

95 At the Parys human rights violations hearing in April 1997, Ms Mathabiso Marie Sekhopa said:

Reference 1337 - 0.01% Coverage

97 At the Duduza human rights violations hearing on 12 February 1997, Ms Evelina Puleng Moloko testified thus: Ms Seroke: Puleng, the people who killed Maki, what happened to them thereafter? Ms Moloko: The people who killed Maki were arrested. That is the people who appeared on the video taking part in the killing. They were convicted, but I do not remember quite well as to what sentences were meted out. Some got five years, some ten respectively, and some got a life sentence, but all of them are here at the present moment. They are out. Ms Seroke: Do you ever meet these people? Ms Moloko: Yes, I do. Ms Seroke: Do you talk? Ms Moloko: Yes, I do talk to some others, and I work at a crèche, and there were two who came to bring their children at that crèche, and if you bring your child there you are supposed to speak to me. I am the one who is responsible with regard to admissions, and they had brought their children. I spoke to them as if nothing happened. We accepted their children, and there is nothing amiss. Everything is just as usual.

Reference 1338 - 0.01% Coverage

100 A few amnesty applicants did seem sensitive to this need for restitution. Colonel Eugene de Kock devoted the royalties from the sale of his autobiography to a trust fund for victims. Mr Sakkie van Zyl saw his participation in the clearing of landmines in Angola as a form of restitution. Mr Brian Gcina Mkhize risked his own life by co-operating with the authorities to expose clandestine operations in KwaZulu-Natal during the years of conflict. The challenge is to involve much larger numbers of those who received amnesty and other perpetrators of gross human rights violations in the process of restitution.

101 The following extract from the 'Bisho massacre' hearing shows that perhaps an even greater challenge may be to involve people on a broader scale: for example, those who gave the orders or voted for the previous government and/or continue to benefit from past human rights violations.

Dr Ramashala: My question relates [not to] Bisho [specifically], but to the gross human rights violations in general which were supported by the then government of the day... We have been very successful in killing. We have been very successful in maiming and leaving people crippled for the rest of their lives. We have been very successful in leaving children without parents and without a future. Have there been any discussions at all within the National Party about these children... We all point to statistics, we all point to who has done what, but I really have never heard any discussions from the political parties about these children and our future, because these are our future South Africa...

Reference 1339 - 0.01% Coverage

Mr Roelf Meyer: Chairperson, I would like to thank the Commissioner again also for raising this issue, and I think, may I first of all say I think you have made an appeal to us – but not only to us, the three of us who are here, not only to our Party – I think you have made an appeal to the whole of South Africa, to all political parties, but also civil society in general, the community out there, everybody in South Africa... I can say, yes, we are in various ways within the National Party attending to this question and related questions. What I would like to suggest is that we have a responsibility to come back to the Commission on this very question... But I think, Madam Commissioner, if I may say, you have raised with us an issue which is probably the most important one in the final instance of the work of the Commission. Because if we can't find an answer to the very question that you have put, then the work of the Commission, with all respect, is not going to be in the long term worth anything. May I say that I don't think it's only those that have suffered directly, but there are many, many South Africans, thousands of South Africans who have also indirectly suffered through apartheid, that we have to consider within the whole spectrum of what we want to do in the future. So it's not only a question of the specific terms of reference of the Commission – namely how to address human rights violations of the nature that has been described in your terms of reference – but it is, in the final instance, we as politicians, as political parties, that have to give direction as to how we are going to rectify the wrongs that flowed from apartheid in a very general sense. Dr Ramashala: Chairperson, may I ask Mr Meyer and his team that, as you prepare that submission, you consider the following comment from the communities, particularly the greater black communities, and I want to quote: "They get amnesty. They get the golden handshake, (meaning rewards). They get retirement pensions worth millions. And we get nothing. And on television they smirk or they smile to boot."

Reference 1340 - 0.01% Coverage

These acts of contrition could take many forms: establishing or funding memorials like those which commemorate the holocaust in Nazi Germany, funding bursaries for black students or basic facilities for pupils, providing medical supplies to amputee hospitals in Mozambique and Angola, church actions such as fasts and others, training in respect for human rights and multi-cultural diversity for teachers and pupils. These are only some examples. These and other actions are forms of reparation, but it's critical that they are undertaken, not as charity, but in partnership with black communities... Let me say in closing that whites who interpret this argument to mean that they should become passive and sycophantic have misunderstood the nature of the challenge. The challenge is to become self-critical not uncritical, to acquire some humility, not be submissive; to become empathetic, not paternalistic. The challenge has nothing to do with self-flagellation or wallowing in guilt. It has everything to do with accepting responsibility for our actions and our lack of action.

Reference 1341 - 0.01% Coverage

There is one thing that is messing up our country; it is the lack of sincerity in our country. It is the lack of recognising other people's contribution if they don't belong to your camp, if they don't belong to your tribe, if they don't belong to your race. We are still victims of fragmentation. We have achieved very little until we have changed... We have been tested; we can forgive, we can reconcile; yet we are also capable of forming third forces to hit back. But that is not what we want. We are looking forward to a better South Africa – a South Africa that will respect the integrity of everybody, irrespective of their colour, creed, tribe, too, and social standing for that matter. And worse still, we must get out of this ideological straightjacket that we can only think of people, only as they belong to your straightjacket; outside your straightjacket, they are expendable commodities that you can wipe off as you please. Commissioner Wynand Malan emphasised the importance of seeing national unity and reconciliation as the embodiment of both a human rights culture and a democratic culture... A shared understanding of the past may well go a long way towards reconciliation, yet an understanding of the other person's perspectives and motives will immensely increase the capacity to live with and manage the other and oneself, even with different understandings of the past persisting... A true human rights culture is a democratic culture. At the heart of a democratic culture is tolerance of divergent views and understandings of the past, present and future... National unity and reconciliation is a society with its members relaxed, a nation democratically at peace with itself.

Reference 1342 - 0.01% Coverage

Chairperson, as the [Commission] wraps up its formal part of the work, as it publishes its report and as it breathes a sigh of relief for a job well done, we must know that the job continues. The mammoth task that still lies ahead is the continuous and consistent struggle for justice and protection of human rights, especially gender justice and gender rights.

Reference 1343 - 0.01% Coverage

Democracy, reconciliation and nation-building remain threatened so long as patriarchy in all its forms and all the forms of patriarchy, Chairperson, are violent forms of patriarchy. They are actually a violation of human rights. We cannot limit human rights to what is in the Act. Gender inequality and gender injustice is a violation of human rights. It does not necessarily mean that we must have the hearings, but it means we must have the process of eradicating that. As we today look back in our gruesome past, we must realise that our present and future remain in jeopardy, despite the good work of the [Commission], if the violence against women and children is allowed to continue. The South African society needs to be mobilised in the same manner that it was mobilised against apartheid. In the same manner that we won that war against apartheid. Why are we not mobilising and engage in that war against violence against women and children? Why is the nation continuing as if nothing is happening? Why are these massacres allowed to happen? Why is this genocide? Why are we allowing it? Why is it being made a role of women? It is not the role of Government alone. It is the role of this society, because if we do not do that, one year, two years down the line, we will have to have that Truth and Reconciliation Commission once again for us to come back and retell the stories that we suffered under democracy, Chairperson. Within our own homes, the domestic violence in our own homes, the violence in our streets, the violence in the work place, the violence that's permeating all of our society. Most of the time what is being highlighted, are the hijackings. I am not undermining this. I am not undermining the deaths. Look at the wall down Wits.¹⁴ That wall! Look at the faces! Ninety-nine per cent – I went there and looked and registered – 99 per cent are faces of men; where are the women who have been killed? Where are the women who have been raped? Where are the women who are getting battered in their own families? They are not in that wall. Why are they not in that wall?

Reference 1344 - 0.01% Coverage

126 The following extract deals with the role of women in a particular church, but can also be seen as a clear challenge for all South Africans to pay more than lip service to the constitutional ideal of a society where men and women can participate fully, where human rights are respected: Ms Joyce Seroke: Bishop Michael, I would like to, through you, commend the CPSA [Church of the Province of Southern Africa] for coming to grips at last after a long and painful process of accepting women as priests in the church, but I would like to know what is the church doing to empower those women for meaningful participation with in the church? Bishop Michael Nuttall: Chairperson, as you will know this is a fairly recent development within the life of our church. It goes back to 1992. Perhaps we should have made that decision long before but, like so many other churches in this respect throughout the world, we have been on a journey and all of us have had to come to a profound change of mind when we've come to the point of accepting women clergy should be as free to operate within the life of our church as men clergy. So, we've only been involved in this for the past five years. We now have something like twenty-three women clergy out of 120 within the diocese which I'm part of ... but there's still a very long way to go, and part of that long way to go is the need for the mindset to change because so many of us across the board, this is not a white or black phenomenon, but across the board, so many of us, particularly those of us who are male, but not only men, have got to make a major inner adjustment to this new reality within the life of our church. But as I said just now, I think that a new liberating process is underway for men and women alike in this process.

Reference 1345 - 0.01% Coverage

130 It would be wrong to make broad generalisations from a case study of a specific community where the Commission held a single human rights violations hearing. However, this work by an independent researcher does contain a number of important signposts for other communities on the road to reconciliation.

Reference 1346 - 0.01% Coverage

The [Commission] process assisted in clarifying past conflicts characterising a limited period of our history. Future reconciliation initiatives must make the links between these divisions of the past and current community dynamics. Victims are individuals with unique experiences and needs. Each victim has to go through a personal journey of dealing with the past. Similarly, each community has a unique history of conflict. There were common dimensions that happened all over the country, but the particular shape and intra-community dynamics took on many different forms. A reconciliation process needs to address these individual and community-specific histories. One uniform national process is only capable of sketching a skeletal picture in broad terms. If left at that, it, in fact, is in danger of minimising the importance of dealing with particular issues when trying to squeeze the history of the community into [Commission] categories of meaning. A national process can draw attention to some of the dynamics and pressures that impact on a local community, but does not "explain" the local history. Communities need to be engaged in creating their own agenda for reconciliation, and designing processes that allow local stakeholders to drive the process. The role of the [Commission] can help provide general models to communities regarding how the issue of past human rights abuses can be pursued in much greater depth. Victims are not ready to engage in a reconciliation process unless they know more about what happened. They often say they are willing to forgive, but they need to know who to forgive and what they are forgiving them for. A willingness to reconcile is dependent on people's ability to cope with and process their knowledge

of what had happened. While the past remains hidden, a reconciliation process proceeds on very shaky foundations. The [Commission] has contributed to some of this revealing, but many individual victims are still in the dark about the details of their specific cases. Victims need to feel that they are no longer in the vulnerable position that they found themselves in at the time of the victimisation. They need to feel that they are now safe from abuses and that if the threat of re-victimisation arises, their pleas for protection will be attended to. These fears are often shaped by local community circumstances rather than the national political situation. Victims need to have done some personal work in working through what happened to them before they are ready to engage in a reconciliation process. They need to have stopped trying to run away from their memories and accept them as part of who they are. They should feel that their lives

Reference 1347 - 0.01% Coverage

132 The idea of such a register had been discussed informally among Commissioners and crystallised during a radio 'phone-in programme, when listeners expressed a need for some way in which to articulate the regret and contrition they felt for past wrongs. Announcing the Register, the Commission said: It has been established in response to a deep wish for reconciliation in the hearts of many South Africans; people who did not perhaps commit gross violations of human rights, but nevertheless wish to indicate their regret for failures in the past to do all they could have done to prevent such violations; people who want to demonstrate in some symbolic way their commitment to a new kind of future in which human rights abuses will not take place. We know that many South Africans are ready and eager to turn away from a past history of division and discrimination. Guilt for wrongdoing needs to be translated into positive commitment to building a better society – the healthiest and most productive form of atonement.

Reference 1348 - 0.01% Coverage

I can only say I chose not to know. I chose the safety of my own comfort over the pain of knowing... I raised my children with privilege, whilst those around me were deprived. I am so deeply sorry! And the opportunity to express this regret and offer apology does not unburden me. This privilege allows me to reach even further into my soul to express the remorse that I feel. It impels me to seek in my own small way to repair the damage to our people and our land caused not only by 'perpetrators', but also by us, the bystanders, in the tragedy of our past. It impels me also to rejoice in the present freedom to build a new and great South Africa. It's not too late – yes, I could have done more in the past, could have been more courageous. I regret that I didn't. But now there is a new opportunity to commit to this country... to build respect for human rights, to help develop the country, to make the ideals enshrined in the constitution real.

Reference 1349 - 0.01% Coverage

140 The announcement by the Dean, Professor Max Price, expresses the hope that "this process and the ensuing report will lead to a public acknowledgement by the Faculty of its record of discrimination and collusion with apartheid and also its opposition to racist government policies, and will begin the reconciliation process within the Faculty and the alumni. It will feed into the Faculty's Equal Opportunities Programme which aims to redress past inequalities. And, it will also lead to recommendations for undergraduate teaching – to promote a human rights culture in health science graduates".

Reference 1350 - 0.01% Coverage

The principle that only a complete and truthful disclosure of past human rights abuses can guarantee lasting reconciliation is now well established. So too is the belief that the obligation to come clean on the past extends beyond our political institutions. To that extent, business, academic and religious institutions also have a responsibility to ensure they disclose the extent of their role in sustaining apartheid. Dorbyl has taken a commendable lead in this regard. Its readiness to investigate and expose its past will go a long way towards repairing relations with workers. It will also help workers reassess their views about management and Dorbyl's claimed commitment to the new political order. Other enterprises must emulate Dorbyl's example. That will make a valuable contribution to the broader effort under way to construct a durable social partnership.

Reference 1351 - 0.01% Coverage

146 Reconciliation involves a form of restorative justice which does not seek revenge, nor does it seek impunity. In restoring the perpetrator to society, a milieu needs to emerge within which he or she may contribute to the building of democracy, a culture of human rights and political stability.

Reference 1352 - 0.01% Coverage

148 Equally important is the readiness to accept responsibility for past human rights violations.

Reference 1353 - 0.01% Coverage

151 Reconciliation requires that all South Africans accept moral and political responsibility for nurturing a culture of human rights and democracy within which political and socio-economic conflicts are addressed both seriously and in a non-violent manner.

Reference 1354 - 0.01% Coverage

18 Problems will never be solved at the level at which they are created. This is my main reservation about the structure of the report. The Act is far more advanced in terms of conflict resolution than is the frame of the report. The Act has as its focus gross human rights violations. The Act does not put apartheid on trial. It accepts that apartheid has been convicted by the negotiations at Kempton Park and executed by the adoption of our new Constitution. The Act charges the Commission to deal with gross human rights violations, with crimes both under apartheid law and present law. The Act does not ask us to deal with or expound on morality or ethics.

Reference 1355 - 0.01% Coverage

29 Much has been made of the need to reconcile victims and perpetrators of gross human rights violations. However important this may be to individuals, the work and experience of the Commission has revealed how remote this ideal is, certainly as far as any significant numbers are concerned. Unfortunately, expectations of particular behaviour, determined by a religious frame, were once again imposed on communities seen as actors in the conflict.

Reference 1356 - 0.01% Coverage

34 If we can arrive at a position where we simply acknowledge the conflicts of the past (as required by the Act), recognising that there were perpetrators and victims of gross human rights violations in these

conflicts, we will have advanced some way towards national unity. If we can reframe our history to include both perpetrators and victims as victims of the ultimate perpetrator – namely, the conflict of the past, we will have fully achieved unity and reconciliation and an awareness of the real threat to our future – which is a dogmatic or ideological division that polarises the nation instead of promoting genuine political activity. Somewhere down the line, we must succeed in integrating, through political engagement, all our histories, in order to discontinue the battles of the past. As with the negotiations that preceded the elections and the drafting of the Constitution, our understanding of history must accommodate all interpretations of the past. If we fail in this regard, we will fail to be a nation.

Reference 1357 - 0.01% Coverage

later permanent indemnity, sealing the negotiated settlement. They moved us away from strife and towards understanding, towards forgiveness (by the state) and away from vengeance. They endorsed our reconciliation and national unity after decades, centuries of strife. So we are faced with a paradox: The disclosure of sometimes horrendous deeds, crimes, gross violations of human rights, committed with political motive under an old order, to be followed by a joyous reintegration into society within a new order of the perpetrator of those self-same deeds. This is seeing both the deed and the doer and severing them from each other. This is part of restorative justice. This is part of the spirit of ubuntu. It is part of the restoration of the organism that is our nation South Africa.

Reference 1358 - 0.01% Coverage

46 The assassination of activists is distinguished from gross human rights violations committed in the name or on behalf of the liberation movements by its clandestine nature. It did not happen in the public domain of the ruling party's body politic. The sense of horror and even betrayal expressed by the support base of the National Party and most of its leadership and even by the body politic of the then system politics in response to the revelations, is a strong indication of a

Reference 1359 - 0.01% Coverage

55 The period 1990 to 1994 is characterised in policy terms as one of negotiation towards a Constitution based on the principle of universal adult franchise. Even to suggest that the government had a secret agenda of human rights violations during this period would border on lunacy. To depict De Klerk as having had a double agenda or even, given his track record, of covering up, would be an injustice to him. 56 Gross human rights violations continued during this period, and may even have increased; though their nature changed. Conflict continues in parts of the country to this day, which strongly suggests that it would be an over-simplification to ascribe the conflicts of the past only to institutional structures.

Reference 1360 - 0.01% Coverage

58 I have already alluded to the fact that apartheid policy from 1948 to 1960 was applied alongside the practices of colonialism. Measured by the contemporary yardstick of international human rights, it always was a crime against humanity. Slavery is a crime against humanity. Yet Paul, in his letters to the Ephesians and Colossians, is uncritical of the institution and discusses the duties of slaves and their masters. Given a different international balance of power, colonialism too might have been found a crime against humanity. Yet apartheid was first declared a crime against humanity by the United Nations General Assembly in 1973 – and not unanimously so. Moral imperatives are phenomena of their times and locations.

Reference 1361 - 0.01% Coverage

of human rights organisations and the cause of a human rights culture in general by highlighting what is now trite international law.

Reference 1362 - 0.01% Coverage

63 All gross human rights violations as defined in the Act constituted crimes under the laws that operated during the apartheid years, and as such may well be tried locally. Further, international law does not provide for the granting of amnesty for a crime against humanity. If international law were to be applied, the Commission might as well never have been established. I do not have to elaborate on consequences.

Reference 1363 - 0.01% Coverage

■ ON VALUE SYSTEMS AND A HUMAN RIGHTS CULTURE

Reference 1364 - 0.01% Coverage

68 Our Constitution, based on a democratic order, even entrenching human rights values, acknowledges the reality of traditional value systems and has regard for traditional leadership.

Reference 1365 - 0.01% Coverage

70 The simultaneous operation of different value systems in society calls for wise systemic management if we want to promote a human rights culture at all. Of course, one can always measure another by one's own value system. Invariably the other will be found wanting.

71 Promoting a human rights culture does not mean, at least to my mind, the moral judgement of others, especially if they do not share your mindset. As I have often said in the immediate past, I find moralising, if not counter-productive to reconciliation and national unity, offensive to my taste.

Reference 1366 - 0.01% Coverage

■ HUMAN RIGHTS CULTURE

74 Because of the subject matter of the Commission's task and the focus on gross human rights violations, it is natural to focus on so-called liberal human rights, to the extent that issues such as unemployment, poverty and illiteracy are seen merely as phenomena in our society. Both in our Constitution and in international human rights instruments, certain rights are acknowledged and extrapolated from these phenomena. All who promote a human rights culture need to understand that social rights are indeed rights. Social rights are not passive. They are not, as liberal human rights have been characterised, prohibitive. They are active. Historically, it is the responsibility of government to actualise these rights through its policies. The report does mention the need to address these phenomena for the sake of national unity and reconciliation. However, policy measures and action plans adopted by authorities are by definition threatening to the liberal mindset. It is therefore necessary to promote discussion in the more affluent liberal rights society of all races, genders and religions, to integrate these social rights into their perception of rights. This has always presented a crisis to such thinking. But crises deepened may trigger paradigm shifts, and what is foreign and threatening may thus become integrated. Where the private sector acknowledges

Reference 1367 - 0.01% Coverage

these phenomena, they may become agendas for their resolution. This is the sigh of social rights protagonists. It is the culture underlying many of the speeches of government representatives. Can liberal society make it its agenda? If it does not do so, liberal human rights will remain an obstacle to the actualisation of social human rights.

75 The same approach can be adopted with regard to the so-called group rights of culture, language and self-determination, all integrated into society, with a view not to separation but to unity and reconciliation. As with traditionalism, the group phenomena were also acknowledged by the fathers of our Constitution, both in the chapter on human rights and in its provisions for deliberations in the Volkstaatraad.

Reference 1368 - 0.01% Coverage

77 Lastly, all human rights have to be translated into rules, into dos and don'ts. That is a function of law and regulation. We need to know in simple terms what we must and must not do. Law must then be enforced. And if people comply with the law and live within the law, they are better left alone. They do not have to be made to like it or to observe it for any other reason than the reasons they themselves may choose.

Reference 1369 - 0.01% Coverage

Gross violations of human rights committed outside the borders of South Africa

80 The amnesty applications elicited by the amnesty provisions in the founding Act were the main source of information on gross human rights violations committed, the main source of our knowledge of what actually happened. Most of our investigations followed up on this information. A source of frustration to the investigation unit and the Commission in general was the refusal by some applicants or would-be applicants to disclose information on cross-border operations, because of the threat of extradition to and prosecution in other countries. In this regard, the provisions have failed the objective.

Reference 1370 - 0.01% Coverage

85 Recommendations for the establishment of special units to follow up on the uncompleted work of the Investigation Unit, in particular to investigate gross human rights violations that resulted from the political conflicts on the past, should be resisted. Such action would militate against the spirit of understanding, the transcending of the divisions of the past, against bringing to close a chapter in our history. It would negate the spirit of the agreement that gave us our democracy. It is a very sensitive issue that requires great wisdom. It would be politically

Reference 1371 - 0.01% Coverage

unfeasible to prosecute all those who committed gross human rights violations in the course of the liberation struggle and who failed to apply for amnesty. In consequence, the principle of even-handed treatment of perpetrators across the spectrum would be negated. One-sided prosecutions would send a message of amnesty first, Nuremberg second. The counter-argument is one of promoting a culture of impunity. It is as thin an argument as was the initial argument against amnesty. Criminal investigations of violations that do not stand the test of political motivation and thus fall outside the provisions of the Act

may well proceed – should indeed proceed. Such investigations are, however, best left to existing structures of state. We need to reach a stage where we can clear our desks of the past without having to clear our memory. We can certainly do without agendas of the past to keep us from forgetting.

Reference 1372 - 0.01% Coverage

(h) make recommendations to the President with regard to the creation of institutions conducive to a stable and fair society and the institutional, administrative and legislative measures which should be taken or introduced in order to prevent the commission of violations of human rights.

Reference 1373 - 0.01% Coverage

11 We find Commissioner Malan's characterisation of the testimony of witnesses in human rights violation hearings as largely influenced by exaggeration or in terms of their own understanding of what happened, to be impertinent and startlingly inappropriate. This attitude exhibits a total lack of appreciation of or sensitivity to the situation of victims of gross violations of human rights or the duties of the Commission as set out in section 11 of the Act, in particular to treat victims with compassion and respect for their dignity. We dispute the allegation that "most deponents giving oral evidence, when taking the oath, made it clear that they would speak the truth 'as they see it' ". This is an unfounded generalisation. Quite significantly, no details or examples are given to substantiate this sweeping statement.

Reference 1374 - 0.01% Coverage

The Intersection between the Work of the Human Rights Violations Committee and the Amnesty Committee CHAPTER 1

Reference 1375 - 0.01% Coverage

Report of the Human Rights Violations Committee CHAPTER 1

Reference 1376 - 0.01% Coverage

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This Report is the culmination of a remarkable effort by extraordinary people, and I want to begin by paying a warm tribute to the Commission's staff, committee members and commissioners. At this time in particular, we give thanks for those staff who, under the direction of Commissioners Hlengiwe Mkhize, Denzil Potgieter and Yasmin Sooka, have given such meticulous attention to bringing the project to finality, to the extent of providing us with summaries of the cases of some twenty thousand people declared to have suffered gross human rights violations in the period between 1960 and our first democratic election. We owe a very great debt of gratitude to Sue de Villiers who, with her editorial colleagues, working under considerable pressure, did wonders to produce this codicil on time. Thank you, thank you. It has been an incredible privilege for those of us who served the Commission to preside over the process of healing a traumatized and wounded people.

Reference 1378 - 0.01% Coverage

In October 1998, the Amnesty Committee (the Committee) submitted an interim report to the Truth and Reconciliation Commission (the Commission). This formed part of the Final Report handed to President Mandela on 29 October 1998. The Final Report contains a broad overview of the functioning and activities of the Committee. In addition, Chapters Four ('The Mandate') and Five ('Concepts and Principles') of Volume One of the Final Report contribute towards a fuller understanding of the amnesty process. Chapter Four describes how the Commission was established and outlines the scope of its mandate, including that relating to the granting of amnesty. It also discusses how the Commission interpreted its mandate and how it went about identifying criteria derived from just war theory and other international human rights principles. The mandate and criteria guided the Commission in determining what constituted gross human rights violations and who or what entities could be held accountable for them, as envisaged in its founding Act, the Promotion of National Unity and Reconciliation Act No. 34 of 1995 (the Act).

Reference 1379 - 0.01% Coverage

3. Although the activities of the Commission were suspended on 29 October 1998, the Amnesty Committee was authorised to continue until it had completed its outstanding work. This it did at the end of May 2001. Moreover, when the lifespan of the Committee was extended in October 1998, certain outstanding duties of both the Human Rights Violations Committee (HRVC) and the Reparation and Rehabilitation Committee (RRC) were statutorily placed under the auspices of the Committee in accordance with an appropriate amendment of the Act. At this stage, two Commissioners, representing the HRVC and RRC respectively, joined the extended Committee to attend to these duties.

Reference 1380 - 0.01% Coverage

8. The amnesty section of the Report is also dedicated to all Committee members and staff, without whose commitment, dedication and contribution it would have been impossible to give effect to the provisions of the Act. Dealing with the atrocities of the past on a daily basis over a period of almost five and a half years was never easy. Equally difficult were the many days spent on the road, visiting venues all over the country and listening to and adjudicating upon reprehensible acts of severe gross human rights violations.

Reference 1381 - 0.01% Coverage

This Constitution provides a historic bridge between the past of a deeply divided society characterised by strife, conflict, untold suffering and injustice and a future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans irrespective of colour, race, class, belief or sex. The pursuit of national unity, the well-being of all South African citizens and peace require reconciliation between the people of South Africa and the reconstruction of society. The adoption of this Constitution lays the secure foundation for the people of South Africa to transcend the divisions and strife of the past, which generated gross violations of human rights, the transgression of humanitarian principles in violent conflicts and a legacy of hatred, fear, guilt and revenge. These can now be addressed on the basis that there is a need for understanding but not for vengeance, a need for reparation but not for retaliation, a need for ubuntu but not for victimisation. In order to advance such reconciliation and reconstruction, amnesty shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past. To this end, Parliament under this Constitution shall adopt a law determining a firm cut-off date, which shall be a date

after 8 October 1990 and before 6 December 1993, and providing for the mechanisms, criteria and procedures, including tribunals, if any, through which such amnesty shall be dealt with at any time after the law has been passed.

Reference 1382 - 0.01% Coverage

19. In this respect, the Act relied heavily on the principles of extradition law and the concomitant definition of a political offence within the international context. A specific and significant influence was the approach followed when preparing for the United Nations-supervised democratic elections in Namibia in 1989. The wording of the Act leaned very heavily on what had become known as the 'Norgaard Principles': an approach formulated under the guidance of Professor CA Norgaard, the former President of the European Commission on Human Rights, and applied to guide the process of identifying Namibian political prisoners for release.

Reference 1383 - 0.01% Coverage

Where no gross violation of human rights had been committed

30. If it was satisfied that the formal requirements had been met, the Committee would inform the applicant that there was no need for a hearing as the act to which the application related did not constitute a gross violation of human rights. In such cases, it would grant the applicant amnesty without holding a hearing.

Reference 1384 - 0.01% Coverage

31. Where the application related to a gross violation of human rights as defined in the Act, a public hearing had to be held. The Committee would notify the applicant, any victim and implicated person and any other person having an interest in the application of the date, time and place where such an application would be heard. These persons had to be informed of their right to be present and to testify at the hearing. The Committee could hear applications individually or jointly.

Reference 1385 - 0.01% Coverage

44. In line with the objectives of the Commission relating to reparation and rehabilitation, the Act provided that, where amnesty was granted and the Committee was of the opinion that a person was a victim of the incident in question, the matter should be referred to the Reparation and Rehabilitation Committee (RRC) for consideration. Where amnesty was refused and the Committee was of the opinion that the act constituted a gross violation of human rights and a person was a victim in the matter, it was also referred to the RRC.

Reference 1386 - 0.01% Coverage

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

Reference 1387 - 0.01% Coverage

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

Reference 1388 - 0.01% Coverage

c It appeared, prima facie, that the application related to an act associated with a political objective, but that such an act did not constitute a gross violation of human rights. In such cases, the application was submitted to the Committee in chambers. The granting of amnesty could then be considered in the applicant's absence unless further investigation was required.

Reference 1389 - 0.01% Coverage

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

Reference 1390 - 0.01% Coverage

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

Reference 1391 - 0.01% Coverage

48. In an effort to assist the Committee, applications were initially submitted to the chief leader of evidence for quality control before submission to the Committee. Incomplete applications were referred back to the analyst with further instructions. If the application did not involve a gross human rights violation, or where it appeared, prima facie, that the application was not likely to be successful, the application was referred to the Committee to be dealt with in chambers. If the application involved a gross human rights violation and it appeared, prima facie, that amnesty was likely to be granted, the application was handed to an evidence leader to prepare for a public hearing. When the chief leader of evidence resigned during 1998, the quality control function was taken over by members of the Committee.

Reference 1392 - 0.01% Coverage

1. Section 19(3) of the Promotion of National Unity and Reconciliation Act No. 34 of 1995 (the Act) gave the Amnesty Committee (the Committee) the discretion to deal with certain applications in the absence of the applicant and without holding a public hearing – after having investigated the application and having made such enquiries as the Committee considered necessary. These matters were generally referred

referred to as 'chamber matters' and concerned incidents that did not constitute gross violations of human rights as defined in the Act (see further Chapter One).²⁴

Reference 1393 - 0.01% Coverage

In terms of subsection 19(3)(b) of the Act, amnesty could be granted in chambers only if the requirements for amnesty (as set out in section 20(1) of the Act) had been complied with; if there was no need for a hearing, and if the act, omission or offence to which the application related did not constitute a gross violation of human rights.

Reference 1394 - 0.01% Coverage

24 Section 1(ix) defined gross violations of human rights as killings, abductions, torture and severe ill-treatment, including any attempt, conspiracy, incitement, instigation, command or procurement to commit any of these acts.

Reference 1395 - 0.01% Coverage

16. Applications relating to offences involving witchcraft were considered to fall into a unique category of human rights violations and were given special attention by the Committee. The question as to whether amnesty could be granted where a victim or victims had been attacked or killed as a result of a belief in witchcraft elicited much debate, and members of the Committee were initially divided on the issue. One view was that such a belief was not sufficient grounds for

Reference 1396 - 0.01% Coverage

52. In line with the provisions of the Act, the Committee was obliged to deal with any application concerning a gross violation of human rights at a public hearing.³⁴

Reference 1397 - 0.01% Coverage

5. During the early hours of the morning of 29 October 1998 – the date of the scheduled handover of the Commission's Report to the President in Pretoria – the ANC launched an urgent application to the High Court for an interdict restraining the Commission from publishing any portion of its Final Report that implicated the ANC in gross violations of human rights before the Commission had considered certain written submissions it had received from the ANC on 19 October 1998. The ANC's submissions were made in response to the contemplated findings annexed to the Commission's notice in terms of section 30(2) of the Promotion of National Unity and Reconciliation Act No. 34 of 1995 (the Act).⁴⁷

Reference 1398 - 0.01% Coverage

It is necessary to understand that the Commission's mandate to investigate and report on the commission of gross violations of human rights required it to cut across political lines and that the Commission was, furthermore, required to conduct its investigations in an objective and transparent manner. Thus, in addition to investigating the former government and its various structures, the Commission also analysed the role of the liberation movements during the mandate period.

8. The Commission also made a distinction between human rights violations committed: firstly, by the armed combatants of the liberation movements in the course of the armed struggle; secondly, against

their own members outside South Africa and, thirdly, by their supporters during the 1980s and after the unbanning of the organisations concerned on 2 February 1990.

Reference 1399 - 0.01% Coverage

9. The Commission based its conclusions and findings on the ANC on a wide range of information and evidence it obtained from: a statements made by those who alleged they had been the victims of gross violations of human rights at the hands of the ANC;

b amnesty applications by ANC members and supporters in respect of acts they had committed, which could have resulted in the perpetration of gross violations of human rights; and

c the ANC itself in its detailed submissions to the Commission and from its own Commissions of Inquiry into human rights violations, namely the Stewart Report and the Motsuenyane and Skweyiya Commission Reports.

10. The Commission's findings that led to the ANC being held morally and politically responsible for the commission of gross violations of human rights pertained largely to the deaths and physical injuries sustained by unarmed civilians. These, the ANC had itself admitted, could be attributed to two main causes: either poor reconnaissance, faulty intelligence, faulty equipment, infiltration by the security forces, misinterpretation of policy by their cadres and anger on the part of individual members of MK, or the 'blurring of lines' between civilian and military targets during the 1980s.

11. As a result of the information placed before it, the Commission found the ANC to be responsible for a range of gross human rights violations arising out of unplanned operations; the bombing of public buildings, restaurants, hotels and bars; the landmine campaign in the northern and north-eastern parts of South Africa; the killing of individual enemies, defectors and spies; operations of uncertain status; the conflict with the IFP; violations committed by supporters in the context of a 'people's war' fostered by the ANC, and the severe ill-treatment, torture and killing of ANC members outside of South Africa.

Reference 1400 - 0.01% Coverage

4. The Commission finds that when Mr de Klerk testified before the Commission on 21 August 1996 and 14 May 1997 that, despite the statement he made set out in clause 3 above, he knew and had been informed by the former Minister of Law and Order and the former Commissioner of Police that the former State President PW Botha and the former Minister of Law and Order Mr Adriaan Vlok, had authorised the former Commissioner of Police General Johann van der Merwe to bomb Khotso House. The Commission finds that the bombing of Khotso House constituted a gross human rights violation. The Commission finds that the former State President Mr FW de Klerk failed and lacked candour to the extent that he omitted to take the Commission into his confidence and/or inform the Commission of what he knew despite being under a duty to do so. The Commission finds that Mr FW de Klerk failed to make full disclosure to the Commission of gross human rights violations committed by senior members of government and senior members of the South African Police, despite being given the opportunity to do so. The Commission finds that his failure to do so constitutes a material non-disclosure thus rendering him an accessory to the commission of gross human rights violations.

5. The Commission finds further that Mr de Klerk was present at a meeting of the State Security Council where former State President PW Botha congratulated the former Minister of Law and Order for the successful bombing of Khotso House. The Commission finds that the failure of Mr FW de Klerk to take legal action against Minister Vlok and General Johann van der Merwe for the commission of unlawful acts when he was under a duty to do so contributed to creating a culture of impunity within which gross human rights violations were committed. The Commission finds further that Mr de Klerk is morally

accountable for concealing the truth from the country when he, as the executive head of government, was under an obligation not to do so.

Reference 1401 - 0.01% Coverage

On 21 August 1996 and 14 May 1997, Mr de Klerk testified before the Commission in his capacity as head of the former government and leader of the National Party. His testimony was accompanied or preceded by written submissions. In his written and oral submissions to the Commission on 21 August 1996, Mr de Klerk stated that neither he nor his colleagues in cabinet, the State Security Council or cabinet committees had authorised assassination, murder, torture, rape, assault or other gross violations of human rights.

Reference 1402 - 0.01% Coverage

Cabinets should be allowed to speak for themselves. In his oral submissions to the Commission on 14 May 1997, Mr de Klerk stated that the bombing of Khotso House was not a gross violation of human rights as there was serious damage to property, but nobody was killed, or seriously injured.

The Commission finds that the bombing of Khotso House constituted a gross violation of human rights and that at all material times, Mr de Klerk must have had knowledge it did despite the fact that no lives were lost.

The Commission finds that when Mr de Klerk testified before the Commission on 21 August 1996, he knew that General van der Merwe had been authorised to bomb Khotso House, and, accordingly, his statement that none of his colleagues in Cabinet, the State Security Council or Cabinet Committees had authorised assassination, murder or other gross violations of human rights was indefensible.

Reference 1403 - 0.01% Coverage

34. In summary, during the period 1982–94, the IFP – known as Inkatha prior to July 1990 – was responsible for gross violations of human rights committed in the former Transvaal, Natal and KwaZulu against persons perceived to be leaders, members or supporters of the United Democratic Front (UDF), the ANC, the South African Communist Party (SACP) and the Congress of South African Trade Unions (COSATU). Other targets were persons who were identified as posing a threat to the organisation, and Inkatha/IFP members or supporters whose loyalty was questionable.

35. The violations of human rights referred to formed part of a systematic pattern of abuse that entailed deliberate planning on the part of the organisation and its members.

Reference 1404 - 0.01% Coverage

37. By virtue of his position as leader of Inkatha and/or the IFP, and Chief Minister in the KwaZulu government, Chief Buthelezi was held accountable by the Commission for the commission of gross violations of human rights by any of the agencies referred to.

Reference 1405 - 0.01% Coverage

107. On appeal, the court investigated the competency of the Committee to grant amnesty to an applicant for gross violations of human rights committed outside the country. The court relied on the provisions of section 20(2) of the Act, namely that the act in question must have been advised, planned, directed, commanded,

Reference 1406 - 0.01% Coverage

1. As was noted in Chapter Two of this volume, the South African amnesty process was unique in that it provided not for blanket amnesty but for a conditional amnesty, requiring that offences and delicts related to gross human rights violations be publicly disclosed before amnesty could be granted. This meant that the Amnesty Committee (the Committee) set sail in uncharted waters, with no international or local precedents to guide it.

Reference 1407 - 0.01% Coverage

7. Thus the amnesty process was often the subject of scrutiny and criticism. Although the Committee was a creature of statute, some critics saw its work as being at odds with that of the Commission's other Committees. While the Human Rights Violations Committee (HRVC) was perceived to be devoting its time and energy to acknowledging the painful experiences of victims of gross violations of human rights, the Amnesty Committee, it was argued, was indemnifying many of the perpetrators of such violations against prosecution and the legal consequences of their actions. These perceptions were, of course, the result of the statutory scheme created by the provisions of the Act. Moreover, while the Amnesty Committee had the powers to implement its decisions, the Reparation and Rehabilitation Committee (RRC), for example, could only make recommendations for reparations for victims. Thus, while perpetrators were granted immediate indemnification if their amnesty applications succeeded, victims were required to wait until Parliament took a final decision on implementing reparations.

Reference 1408 - 0.01% Coverage

31. In a few cases, the Committee found that gross human rights violations that did not fall within the ambit of the Act had occurred during and as a result of the conflicts of the past. These related mainly to intra-organisational conflicts. In such conflicts, the acts in question were not directed at a political opponent as required by the Act. Although these cases might have been deserving, they could not qualify for amnesty. This difficulty could have been addressed by extending the ambit of 'an act associated with a political objective' so as to encompass matters of this nature.

32. In many instances, where applications were unopposed and the facts common cause among all interested parties, the Committee was still compelled to hold public hearings merely by virtue of the fact that these matters concerned gross human rights violations. These included, for example, matters related to conspiracies to commit a gross violation of human rights where plans were later aborted, and abductions of persons for a very limited period of a few hours without any physical harm being done to the victim. A wider discretion to grant amnesty in matters where the application was unopposed and the facts common cause, without having had to hold a public hearing, would have contributed to a more expeditious process and cost savings.

33. Applications for amnesty were received from persons in leadership positions in various political groupings, who accepted collective responsibility for (gross) human rights violations committed within the ambit of their policies or resulting from a misguided but bona fide belief that these violations were perpetrated in the implementation of such policies. Often these applications were made pursuant to calls by the Commission on persons in leadership to apply for amnesty. The application of the provisions of the Act to such matters was fully dealt with in the High Court review of the collective amnesty application by ANC leaders.

Reference 1409 - 0.01% Coverage

37. The Committee believes that, in all its many facets, the amnesty process made a meaningful contribution to a better understanding of the causes, nature and extent of the conflicts and divisions of the past. It did so by uncovering many aspects of our past that been hidden from view, and by giving us a unique insight into the perspectives and motives of those who committed gross violations of human rights and the context in which these events took place.

Reference 1410 - 0.01% Coverage

part of the Final Report of the Truth and Reconciliation Commission (the Commission), which was handed to the President of South Africa on 28 October 1998. In that chapter, the RRC discussed the need for reparation and the moral and legal obligation to meet the needs of victims of gross human rights violations. The RRC also outlined the nature and progress of the urgent interim reparation (UIR) programme and submitted a comprehensive set of proposals for final reparations. The present chapter needs to be read in conjunction with that earlier chapter.

Reference 1411 - 0.01% Coverage

for those who had suffered human rights violations.

Reference 1412 - 0.01% Coverage

the taking of measures aimed at the granting of reparation to, and the rehabilitation and the restoration of the human and civil dignity of, victims of violations of human rights; ...

Reference 1413 - 0.01% Coverage

When the Committee [on Human Rights Violations] finds that a gross violation of human rights has been committed and if the Committee is of the opinion that a person is a victim of such violation, it shall refer the matter to the Committee on Reparation and Rehabilitation for its consideration in terms of section 26.4

Reference 1414 - 0.01% Coverage

(2) W h e r e amnesty is refused by the Committee and if it is of the opinion that – (a) the act, omission or offence concerned constitutes a gross violation of human rights; and

Reference 1415 - 0.01% Coverage

11. This is an individual financial grant scheme. The Commission recommended that each victim of a gross human rights violation receive a financial grant, based on various criteria, to be paid over a period of six years.

Reference 1416 - 0.01% Coverage

16. The establishment of government-led community-based services and activities is aimed at promoting the healing and recovery of individuals and communities affected by human rights violations. As many victims were based in communities that were subjected to systemic abuse, the RRC identified possible rehabilitation programmes and recommended a series of interventions at both community and

national level. These included programmes to demilitarise youth who had been involved in or witnessed political violence over decades; programmes to re s e t t l e the many thousands displaced by political violence; mental health and trauma counselling, as well as programmes to rehabilitate and reintegrate perpetrators of gross violations of human rights into normal community life.

Reference 1417 - 0.01% Coverage

17. Institutional reform included legal, administrative and institutional measures designed to prevent the re c u r r e n c e of abuses of human rights. The Commission d rew up a fairly substantial set of recommendations aimed at the creation and maintenance of a stable society – a society that would never again allow the kind of violations experienced during the Commission’s mandate period. These included recommendations relating to the judiciary, security forces and correctional services as well as other sectors in society such as education, business and media.

Reference 1418 - 0.01% Coverage

Committee on Human Rights Violations has continuously re f e r r e d new victims to the RRC as it completed its findings and dealt with appeals against earlier negative findings. As a result of these two processes, victim referrals were still b e i n g made t o t h e R R C up to the t i m e of f i n a l i s i n g t h i s r e p o r t .

Reference 1419 - 0.01% Coverage

c o n c r e t e expression in the Promotion of National Unity and Reconciliation Act No. 34 of 1995 (the Act), which mandated the Commission to develop measure s for the provision of reparation to those found to have been victims of gross violations of human rights.

Reference 1420 - 0.01% Coverage

Any person who is of the opinion that he or she has suffered harm as a result of a gross violation of human rights may apply to the Committee for reparation in the prescribed form ... [section 26(1)].

Reference 1421 - 0.01% Coverage

5. Entitlement to reparation there f o r e arises from the provisions of the Act itself. The only qualification is that the recipient must be a victim of a gross violation of human rights as defined in section 1 of the Act, 1 2 subsequent promulgated re g u l a t i o n s .

Reference 1422 - 0.01% Coverage

6. The general statutory obligations imposed upon the Truth and Reconciliation Commission (the Commission) created a legitimate expectation on the part of victims of gross violations of human rights that the Commission would fulfil this part of its mandate. This legitimate expectation gave rise to legally enforc e a b l e rights in terms of section 26 of the Act. According to this section, persons are entitled to apply for reparations by virtue of having been re f e r r e d as a victim to the RRC either by the Amnesty Committee¹ 3 Rights Violations Committee¹ 4

Reference 1423 - 0.01% Coverage

12 Section 1(xix) of the Act defines 'victims' as – (a) persons who, individually or together with one or more persons, suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss or a substantial impairment of human rights – (i) as a result of a gross violation of human rights; or (ii) as a result of an act associated with a political objective for which amnesty has been granted; (b) persons who, individually or together with one or more persons, suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss or a substantial impairment of human rights, as a result of such person intervening to assist persons contemplated in paragraph (a) who were in distress or to prevent victimization of such persons; and (c) such relatives or dependants of victims as may be prescribed. 13 Section 22 of the Act .

Reference 1424 - 0.01% Coverage

However, the judgment noted that the 'postamble' made provision not only for a amnesty, but also for a reparations process: The election made by the makers of the Constitution was to permit Parliament to favour 'the reconstruction of society' involving in the process a wider concept of 'reparation' which would allow the state to take into account the competing claims on its resources, but at the same time, to have regard to the 'untold sufferings' of individuals and families whose fundamental human rights had been invaded during the conflict of the past.²²

Reference 1425 - 0.01% Coverage

16. The protection of human rights is widely recognised as a fundamental aim of modern international law, which holds states liable for human rights violations and the abuses they or their agents commit. For some considerable time now, the minds of the international legal community have been preoccupied with the issue of compensation for injuries arising from human rights violations and the formulation of effective reparation policies. Although no consistent reparations policy has evolved in international human rights law, there is nevertheless reasonable consensus about the obligations of states to make reparations for violations of human rights.

17. A survey of international law institutions, bodies and tribunals at both global and regional level, taken together with the many treaties, declarations, conventions and protocols in respect of the protection of civil liberties and human rights, provides overwhelming proof of the moral and legal support the Commission's reparations policy finds in international law. Indeed, as will be shown, the reparation policy proposed by the RRC is in many respects framed by the policy positions of the international human rights community.

18. The Universal Declaration of Human Rights of 1948, the founding document on international human rights, states that: 'Everyone has the right to an effective

Reference 1426 - 0.01% Coverage

19. Further examples of support for reparation can be found in the International Covenant on Civil and Political Rights (1966); the International Convention on the Elimination of All Forms of Racial Discrimination (1966); the Convention on the Prevention and Punishment of Genocide (1948); the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (1984); the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985); the United Nations (UN) Security Council Resolution on the Establishment of the UN Compensation Commission (1991), and the study by the United Nations High Commission on Human Rights (UNHCHR) concerning

the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms (1993).

Reference 1427 - 0.01% Coverage

21. Subsequent to the publication of the Commission's Final Report, the UN authorised a further study on the subject of reparations. On 18 January 2000, a UNHCHR working group, headed by international human rights scholar M Cherif Bassiouni, drew up a report that incorporated the UN 'Draft Principles and Guidelines on the Right to Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law' (the Draft Principles). The report confirms that, in order to comply with their international human rights and humanitarian law obligations, states must adopt inter alia: a p p r o p r i a t e and effective judicial and administrative p r o c e d u r e s and other a p p r o p r i a t e measures that provide fair, effective and prompt access to justice; and

Reference 1428 - 0.01% Coverage

27 Articles 9(5) and 14(6) United Nations Declaration of Human Rights. V O L U M E 6 S E C T I O N 2 C H A P T E R 2 P A G E 1 0 3

Reference 1429 - 0.01% Coverage

23. As the right to a remedy for victims of human rights abuse has increasingly been accepted in international human rights and humanitarian law, r e a s o n a b l e consensus has begun to emerge as to what such reparation should entail. S i g n i f i c a n t l y, in almost every instance, the remedy envisaged goes far beyond individual monetary compensation.

Reference 1430 - 0.01% Coverage

26. In 1998, the Working Group on Involuntary or Enforced Disappearances issued a similar declaration. However, it extended the right of r e d r e s s to the family of the victims and stipulated that, in the case of enforced disappearances, it was the primary duty of the state to establish the fate and whereabouts of the disappeared. In considering what could be regarded as adequate reparation, the Working Group stated that it should be 'proportionate to the gravity of the human rights violations (that is the period of disappearance, the conditions of detentions and so on) and to the suffering of the victim and the family'. In determining compensation, the Working Group noted that consideration should be given to the following: a physical and mental harm; b lost opportunities; c material damages and loss of e a r n i n g s ;

Reference 1431 - 0.01% Coverage

Article 22: Restitution should, wherever possible, r e s t o r e the victim to the original situation before the violations of international human rights or humanitarian law o c c u r r e d. Restitution includes: restoration of liberty; legal rights; social status; family life or citizenship; r e t u r n to one's place of residence; restoration of employment and r e t u r n of property.

Article 23: Compensation should be provided for any economically assessable damage resulting from violations of international human rights and humanitarian l a w, such as: physical or mental harm, including pain, suffering and emotional d i s t r e s s; lost opportunities, including education; material damages and loss of e a r n i n g s, including loss of earning potential; harm to reputation or dignity; costs re

quired for legal or expert assistance, medicines and medical services, and psychological and social services.

Reference 1432 - 0.01% Coverage

a judicial decision restoring the dignity, reputation and legal and social rights of the victim and of the persons closely connected with the victim; apology, including public acknowledgment of the facts and acceptance of responsibility; judicial or administrative sanctions against persons responsible for the violations; commemorations and tributes to the victims; inclusion of an accurate account of the violations that occurred of international human rights and humanitarian law in training and in educational material at all levels. Preventing the recurrence of violations by such means as (1) Ensuring effective civilian control of military and security forces; (2) Restricting the jurisdiction of military tribunals only to specifically military offences committed by members of the armed forces; (3) Strengthening the independence of the judiciary; (4) Protecting persons in the legal, media and other related professions and human rights' defenders; (5) Conducting and strengthening, on a priority and continued basis, human rights training to all sectors of society, in particular to military and security forces and to law enforcement officials; (6) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as the staff of economic enterprises; (7) Creating mechanisms for monitoring conflict resolution and preventive intervention.

Decisions of international human rights bodies supporting the right to reparation

30. The creation of numerous bodies and procedures within the UN system has created a powerful mechanism for (amongst other things) the investigation of reported violations of human rights, the holding of public hearings, and recommendations on international policy. Yet none of the UN's permanent treaty or internal bodies is legally empowered to give concrete effect to reparations or the bringing of perpetrators to book.

31. Despite this, several regional bodies established to promote and protect human rights do have such competence. European and Inter-American bodies in particular have developed a rich jurisprudence around international human rights and humanitarian law generally, as well as on specific issues such as reparation.

32. The Inter-American Commission on Human Rights (IACHR) is, for example, empowered to investigate complaints and to effect the amicable settlement of disputes. In two well-publicised cases, the IACHR brokered a settlement where

Reference 1433 - 0.01% Coverage

an undertaking properly to investigate, prosecute and punish the perpetrators of the violation of the human rights of the deceased and their families.

Reference 1434 - 0.01% Coverage

35. The IACHR has been particularly concerned with an important area of international jurisprudence relating to the issue of impunity: not only as it concerns past violations, but also to the prospect of violations that may take place in the future. This has a direct bearing on the kinds of reparation needed to remedy the situation. In its report on the Ley de Caducidad in Uruguay, the IACHR concluded that the impunity granted to officials who had violated human rights during the

Reference 1435 - 0.01% Coverage

period of military rule was in breach of the American Convention on Human Rights. A similar finding was made in respect of Argentina's Ley de Punto Final (the 'full-stop law') and Presidential Pardon No. 1002. In this respect, the South African Commission's recommendations in relation to protection 29

Reference 1436 - 0.01% Coverage

36. Where settlement is not possible, the IACHR refers disputes to the InterAmerican Court on Human Rights. In *Valesquez Rodriguez v Honduras* 1988 and *Godinez Cruz v Honduras* 1989, the Inter-American Court of Human Rights found the government of Honduras responsible for the disappearances of two young men at the hands of the military. Despite the argument by Honduras that the Court was limited to awarding the most favourable benefit under Honduran law for accidental death, the Court decided that international law required restitution of the status quo ante (before the violation occurred) where possible. Another case where full compensation was required was in the *Barrios Altos* case.³⁰

Reference 1437 - 0.01% Coverage

v Peru, the Court agreed that reparations could be granted, based on identifiable damage suffered as a result of a violation that included lost opportunities (proyecto de vida or 'enjoyment of life'). It should be noted that compensation proposed by the RRC does not include the notion of 'lost opportunities' addressed in this and other international human rights instruments and law. In this respect, the individual compensation proposed by the RRC is a far more modest amount.

37. The former European Court of Human Rights gave a more restrictive interpretation to Article 50 of the European Convention for Human Rights and Fundamental Freedoms, which provided, inter alia, for adequate compensation for human rights violations. This hampered the evolution of remedies in the European system. However, since the creation of the new European Court of Human Rights on 1 November 1998, the Court has expressed its opinion³¹

Reference 1438 - 0.01% Coverage

38. More recently, the Organisation of African Unity (OAU) established a system designed to ensure adherence to human rights. In 1986, the OAU issued an African Charter on Human and People's Rights. This Charter established an

29 See recommendation on 'Accountability', Volume Five, Chapter Eight, p. 309. 30 Judgment March 14 2001 Inter-American Court on Human Rights Sec. C No 75 2001. 31 In cases like *Papamichalopoulos and Others v Greece*.

Reference 1439 - 0.01% Coverage

independent African Commission on Human and People's Rights, which was entrusted with, inter alia, the promotion and protection of human rights in African states as well as interpretation of the Charter.

39. In June 1998, the OAU went on to adopt a draft protocol for the establishment of an African Court on Human Rights. Article 26(1) provides that, if the Court should find that a violation of a human or people's rights has been committed, it should make appropriate orders to remedy the violation, including the payment of fair compensation or reparation.

Reference 1440 - 0.01% Coverage

42. This implies that amnesty in respect of civil liability for human rights violations can be reconciled with international law only where the state has simultaneously furnished some mechanism of investigation and some form of reparation for victims. Thus the 'Draft Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity' prepared for the UNHCHR's SubCommission on Prevention of Discrimination and Protection of Minorities in October 1997 stipulates that:

Reference 1441 - 0.01% Coverage

43. Repeated references in international human rights instruments and treaties, echoed by state practice and expert opinion, to the obligation of states to respect and ensure respect for rights, right of access to justice and the right to remedy, provide strong evidence of a customary obligation. Such obligation implies that victim reparations are a minimum requirement where ordinary access to the courts is limited.

44. Therefore, because the South African amnesty process deprives victims of access to the courts, its international legitimacy depends on the provision of adequate reparations to the victims of gross violations of human rights. Making good the injuries to victims of gross violations of human rights where their ability to seek reparation has been taken away from them is thus an inescapable moral obligation on the part of the post-apartheid democratic state.

Reference 1442 - 0.01% Coverage

46. It can be seen from the above discussion that the reparation policy proposed by the RRC is well within the bounds determined by international human rights law.

Reference 1443 - 0.01% Coverage

47. Finally, it must be noted that the former government was not a party to any of the major international human rights treaties during the Commission's mandate period – that is, the period during which violations of human rights were perpetrated on a large scale. This does not, however, render the current South African government immune from the obligation to make reparation for gross violations committed during the mandate period. As indicated above, South Africa is bound by customary international law for violations committed during the apartheid era.

Reference 1444 - 0.01% Coverage

Elsewhere in South America, a series of truth commissions were established by transitional governments with the aim of investigating human rights violations and abuses committed by predecessor regimes. The issue of reparation is merged strongly from the work of such commissions.

Reference 1445 - 0.01% Coverage

In May 1987, the Law of Due Obedience (Law No. 23521) created a presumption that low- and middle-ranking officers as well as most officers of higher rank acted under superior orders and duress and could not, therefore, be prosecuted for human rights abuses.³⁵

Reference 1446 - 0.01% Coverage

4. However, such amnesties did not preclude the possibility of victims and families of victims instituting civil claims. In addition, a number of laws were passed providing for reparations to compensate victims of human rights violations.³⁸

a Law No. 24 411 (Argentina, 7 December 1994) provided for monetary reparations for families of the disappeared and killed. Victims had to have been listed in the report of the National Commission on the Disappeared or have been subsequently reported to the government's Human Rights Office (which requires verification through mention in the media, a human rights report or court documents). The amount of the award was a one-time payment to the family of \$220 000 paid in state bonds. The amount was determined with reference to the civil service pay scheme and equivalent to 100 months at the salary level of the highest-paid civil servant.

Reference 1447 - 0.01% Coverage

c Law No. 24 043 (Argentina, 11 May 1994) provided monetary reparations for those imprisoned for political reasons or forced into exile. The law applied to political prisoners held without trial; those who had been 'temporarily disappeared', and whose case was reported to the media, to the truth commission or to a human rights organisation at the time, and to those arrested and sent into exile by the authorities. The award amounted to the equivalent of the daily salary rate of the highest-paid civil servant for each day the victim spent in prison or in forced exile. The award was made in a one-time payment of state bonds and could not exceed \$220 000. If the victim had died while in prison, his or her family was entitled to the same daily rate up until the date of death plus the equivalent of five years at the same rate up to a total of \$220 000. If the victim had been seriously wounded while in prison, his or her family was entitled to the daily rate plus the equivalent of 3.5 years at the same rate, up to a total of \$220 000. The estimated cost of these reparations to the state was approximately \$500 million.

Reference 1448 - 0.01% Coverage

19. While neither Brazil nor Malawi instituted truth commissions following the transition from dictatorship to democracy, both countries have subsequently recognised the need to provide some form of compensation to victims of human rights abuse.

Reference 1449 - 0.01% Coverage

23. This obligation should be borne in mind when considering the countries in Southern Africa, whose citizens suffered extensive violations of their human rights as a consequence of the South African conflict and whose economies were devastated by South Africa's destabilisation policy during the 1980s.

Reference 1450 - 0.01% Coverage

24. Possibly the most extensive and costly reparations programme ever was borne by the Federal Republic of Germany (West Germany) following World War II. Reparations were paid both to victims of state violence (German citizens who suffered human rights abuse at the hands of the Nazi state) and to nationals of occupied territories, the latter assuming the form of both collective and individual compensation. A Reparations Conference in Paris at the end of 1945 agreed on the principle of compensation to victims of Nazi atrocities. Since then, literally billions of Deutsche Mark (DM) have been paid.

Reference 1451 - 0.01% Coverage

48 Geneva Convention, Article 91 of Additional Protocol 1 of 1977. 49 Shelton, D, Remedies in International Human Rights Law. Oxford University Press, 2001, p. 335. 50 Shelton, D, Remedies in International Human Rights Law, p. 335.

Reference 1452 - 0.01% Coverage

32. In the Philippines, the victims of human rights abuses brought a class action suit against the estate of former President Ferdinand Marcos.⁵¹

Reference 1453 - 0.01% Coverage

2. The stories below have not been chosen because they represent specific categories of the consequences of human rights violations and the issues they raise for reparation and rehabilitation. They are not and cannot be representative. They simply try to offer a context, a way to bring us back to what sometimes risks being obscured in the process of amassing and interpreting so vast a body of material. In so doing, they provide an opportunity to remember why we began this long and difficult journey into our past ... a chance to hear once again the voices of some of those who spoke to us along the way.

Reference 1454 - 0.01% Coverage

36. Whilst the Commission process did unearth a significant amount of new information with regard to the causes, nature and extent of gross human rights violations, its processes inevitably also produced important information that could not be brought to an absolute conclusion or closure.

Reference 1455 - 0.01% Coverage

50. Mr Mothuphi's brother and sister and two other passengers were killed in the shooting and his nose was destroyed. For seven years, the young man covered the hole in his face with an 'Elastoplast' bandage. In 1998, Mr Mothuphi was invited to attend the amnesty hearing of the AWB members involved in this incident. At the time of the hearing, Mr Mothuphi had not been declared a victim of a gross violation of human rights by the Commission, as he had not made a statement to the Committee on Human Rights Violations (HRVC).

Reference 1456 - 0.01% Coverage

CONSEQUENCES OF GROSS VIOLATIONS OF HUMAN RIGHTS: DISCUSSION

Reference 1457 - 0.01% Coverage

61. Some of the arguments politicians have raised in response to calls to implement the recommendations of the Commission's RRC have caused concern. They make the point that the majority of victims were political activists who, in one way or another, made a conscious decision to engage in a political struggle against apartheid. The argument is often expressed thus: 'we were not in the struggle for money'. While the Commission understands the grounds upon which this statement is made, in terms of international human rights law on reparations and rehabilitation even political activists who decided to

become involved in the struggle against apartheid should be compensated if they became casualties of the conflict.

Reference 1458 - 0.01% Coverage

62. The Reparation and Rehabilitation policy raises far-reaching and complex questions concerning individuals who have been victims of gross violations of human rights. How can we assess the impact of an abuse of human rights on the life of any one individual? Is it possible to separate that abuse from other aspects of a person's life? Is it possible to make an accurate assessment of the impact without understanding the full context of that person's life? How can we conclude what a person's life would have been like had the violation not occurred?

Reference 1459 - 0.01% Coverage

64. However, in many cases, people affected by what are defined as gross violations of human rights have been living lives in which other, ongoing stressors have played their part. These stressors include living with poverty, discrimination, lack of access to the resources the country has to offer and the experiences of humiliation and disrespect that many black South Africans have borne for generations. Moreover, oppression, humiliation and racism have serious consequences not only for individuals but for the social fabric as well. Thus, although the Commission is bound by its mandate to consider only certain kinds of violations, it is necessary to describe the context within which these violations took place.

65. This leads to a further question to be considered: how do we understand the consequences of social injustice and human rights violations for individuals, for their families and for communities?

Reference 1460 - 0.01% Coverage

68. Another complexity in understanding human rights violations lies in the fact that the same people have, in different events, been both victims and perpetrators. One reasonably common consequence of abuse is that abused people have a greater likelihood of becoming perpetrators of abuse. Many people who have perpetrated what are defined as gross violations of human rights have themselves been affected by abuse, poverty and discrimination.

69. Furthermore, the consequences of human rights abuse and political oppression may at times cross the boundaries of public and private life. For example, a person who has been abused and humiliated in the context of a political struggle may be more likely to perpetrate abuse and humiliation in the context of family life. It has also been well established in many contexts that people who have been oppressed may be at risk of emulating their oppressors – and of taking on the oppressor role in the future. Active intervention in this cycle is often necessary in order to break it.

Reference 1461 - 0.01% Coverage

71. There are examples worldwide of noble agreements aimed at resolving bloody conflicts that have proved unsustainable beyond the lifetimes of the peacemakers. Talks about reconciliation that fails to emphasise justice for victims seem doomed to fail in their promise of national unity and reconciliation. This is why calls for reparation and rehabilitation urge South Africans to dismantle the 'conspiracy of silence' that often characterises the ongoing experience of victims and survivors of violations of gross human rights.

Reference 1462 - 0.01% Coverage

healing and recovery of individuals and communities. Institutional, legal and administrative reforms are designed to prevent the recurrence of human rights abuses.

Reference 1463 - 0.01% Coverage

15. As noted above, it is the aim of a recently established reconstruction and development fund established in Switzerland to persuade those who benefited substantially from doing business with Pretoria during the 1980s to contribute to the fund. It is estimated that the amount pledged by Swiss banks and investors currently totals less than 0.02 per cent of profits generated by Swiss banks and investors each year during the 1980s, during which period gross violations of human rights were committed on a wide scale.

Reference 1464 - 0.01% Coverage

23. The case for reparations from the banks is based on three arguments: As Pretoria's key partner in the international gold trade, Swiss banks benefited over several decades from the exploitation of the black mineworkers, whose human rights were violated by (amongst other apartheid policies) the pass laws, the migrant labour system and suppression of trade union activity.

Reference 1465 - 0.01% Coverage

41. The politics of racial segregation and apartheid suppressed for decades both the human rights and the consumer demands of South Africa's black people. People living in low-income black residential areas, both urban and rural, persistently faced high environmental costs. Energy sources other than electricity (low-quality coal and wood burning in open indoor fires without proper stoves and chimneys, paraffin and candles) have constantly polluted the air and endangered their users. Accidental fires and burns, paraffin poisoning and chronic bronchitis were all too common. On winter evenings, dense smog with high concentrations of sulphur dioxide, carbon dioxide, airborne ash particles and dust was found hanging low over black residential areas, leading to respiratory diseases and even circulatory disorders, and severely reducing the quality of life for young and old.

Reference 1466 - 0.01% Coverage

60. A reparations claim against corporations like Anglo American would be based on the extent to which decades of profits were based on systematic violations of human rights. In legal terms, this could be based on the principle of 'unjust

Reference 1467 - 0.01% Coverage

5. The actors are survivors of gross human rights violations, and indeed only act in the sense that they are on a stage engaged in a performance of their experiences. Their role changes to that of facilitators when, importantly, the play does not end, but moves on to include the audience in an interactive debate and discussion.

Reference 1468 - 0.01% Coverage

the systemic abuse committed during the apartheid era, virtually every black South African can be said to be a victim of human rights abuse. By using the fact that they testified as evidence of their 'elite' character, these critics are in essence propounding the astounding argument that these victims should be punished (denied legitimate expectations) for having come forward.

Reference 1469 - 0.01% Coverage

There are major challenges for the reparation and rehabilitation process. As indicated in earlier chapters, it is often difficult to distinguish victims from nonvictims and even to isolate key events that caused subsequent problems in people's lives. It is not always possible to draw a clear line between a gross violation of human rights and the more general features of oppression. It is difficult to know where, in the ongoing development of individuals, families and communities, one could measure the effects of human rights abuses, even if such measure were theoretically possible. Given the very limited resources in South Africa, very little of this work can be done.

Reference 1470 - 0.01% Coverage

10. Despite this, preferential opportunities on the basis of need for victims across the political spectrum may be important symbolic acts: they would communicate that the current leadership takes seriously what South Africans have endured, and signal a commitment to establishing a just and humane society in which human rights are respected.

Reference 1471 - 0.01% Coverage

19. The challenge to decision makers is how to acknowledge those who actively engaged with the legal framework of the Act and were found to be victims of gross human rights violations. They must honour the social contract in which these victims engaged, while at the same time adequately acknowledging those who did not or were not able to engage in the process, without overvaluing or undervaluing either party.

Reference 1472 - 0.01% Coverage

1. Unlike the other statutory Committees of the Truth and Reconciliation Commission (the Commission), the Reparation and Rehabilitation Committee (RRC) began the bulk of its administrative work at the tail end of the process of both the Human Rights Violations Committee (HRVC) and the Amnesty Committee. The RRC received its first list of victims'7 6

Reference 1473 - 0.01% Coverage

8. Once the HRVC had referred its victim findings to the RRC, the RRC notified each victim of the findings and sent her or him an individual reparation application form, as required by the Act. The Commission had earlier decided not to elicit the required information at the initial statement-making stage for two reasons. First, the human rights violation statement did not constitute a sworn affidavit. Second, the Commission was reluctant to raise expectations concerning reparations before a finding had been made, in order to avoid disappointment in those instances where it might make a negative finding or where it might be unable to make a finding because of insufficient corroboration.

Reference 1474 - 0.01% Coverage

had been declared 'victims' by the Commission. The risks and benefits of making application forms available at public offices such as post offices or municipal structures were considered at length by the RRC. Again it was eventually decided that public access would create confusion and lead to raised expectations on the part of those who did not make human rights violation statements to the Commission.

Reference 1475 - 0.01% Coverage

and suffering endured as a result of the gross human rights violations,

Reference 1476 - 0.01% Coverage

78 Categories of harm were derived from the Act's definition of 'victim' (section 1(1)(xix)). They were: physical or mental injury, emotional suffering, pecuniary loss, or a substantial impairment of human rights.

Reference 1477 - 0.01% Coverage

27. This referral process lay at the heart of the interim reparation process in that it emphasised a reparative intervention based on the reported consequences of a gross human rights violation and did not focus merely on making a financial grant. The fact that this aspect of the programme has so significantly failed to deliver so far is extremely disappointing. The Commission's policy recommendations published in its Final Report depended on a carefully balanced reparation package.

Reference 1478 - 0.01% Coverage

43. In November 1998, the Banking Council informed the RRC that a number of banks had responded positively to its request and were willing to use special savings accounts to assist victims of gross human rights violations. This positive response must be qualified, as the banks in question, although helpful in bringing the RRC's direct attention to existing products, did not initiate any new or tailor-made banking products. The banks that indicated their co-operation were : ABSA, First National, Cape of Good Hope, Meeg Bank Limited and Mercantile Lisbon, Saambou and Standard banks.

Reference 1479 - 0.01% Coverage

Victims who approached the Commission after the cut-off date for making the initial human rights violation statement

46. The fact that only those declared to be victims by the HRVC or Amnesty Committee were eligible for reparation was constantly brought to the RRC's attention. The cut-off date for submissions of human rights violations (HRV) statements (December 1997) presented a number of difficulties, as many people felt they had been unable to make a statement for a number of legitimate reasons. This was especially true in KwaZulu-Natal, where many victims had been advised – either by their political party or by their traditional leadership – not to approach the Commission. The initial statement cut-off date was extended in an attempt to accommodate this group, and as many as 3000 statements were submitted at the eleventh hour.

Reference 1480 - 0.01% Coverage

58. It should be noted that the idea that the Commission would assist and support victims was founded in the spontaneous commitments made by Commissioners serving on panels during the human rights violations hearings. Although such commitments were understandable in the traumatic environment of the time, these declarations were made before a reparation policy was in place, and left the RRC with a legacy of perceived undertakings that could not possibly be met and which, in turn, led to a great deal of frustration from victims.

Reference 1481 - 0.01% Coverage

g The RRC believes that the four years of collecting detailed profiles of the consequences of gross human rights violations for identified victims will assist in the costing and development of an acceptable final reparati on policy.

Reference 1482 - 0.01% Coverage

The Intersection between the Work of the Human Rights Violations Committee and the Amnesty Committee

Reference 1483 - 0.01% Coverage

1. The Truth and Reconciliation Commission (the Commission) found the state – and in particular its security agencies and affiliated policy and strategy formulation committees and councils – to be the primary perpetrators of gross violations of human rights committed during the thirty-four years it was mandated to investigate. 1

2 . Some 50 per cent of all amnesty applications received from members of the security forces related to incidents that occurred between 1985 and 1989. No applications were received in respect of incidents that occurred in the first decade of the Commission's mandate and few applications were received for the pre-1985 and post-1990 periods. Despite this, evidence received by the Commission shows that the security forces were responsible for the commission of gross human rights violations during both of these periods.

Reference 1484 - 0.01% Coverage

Inside the country, the SADF was involved in the development and management of national security policy, especially with respect to the National Security Management System (NSMS) and the development of the strategy of counterrevolutionary warfare, which provided the framework in which gross violations of human rights took place.

Reference 1485 - 0.01% Coverage

8. No members of the National Intelligence Service (NIS) applied for amnesty. This was consistent with their stated position that, as members of a non-operational s t r u c t u r e, they were not directly involved in the commission of gross violations of human rights.

Reference 1486 - 0.01% Coverage

13. In the early days of the Commission, most members of the former security f o r c e s viewed the amnesty process with antipathy and deep suspicion. Many of them were bitter and confused. They had committed their careers (and indeed their hearts and minds) to defending the interests of the former regime. Now

that the ANC was in power, they found themselves in the spotlight, torn between the need to account for their actions and their fear as to what might happen if they did. Many were angered by what they saw as betrayal by their former political masters as every man scrambled to save himself. More o v e r, despite the fact that the negotiated settlement, the Interim Constitution and the ensuing legislation re q u i red that the amnesty provisions be even-handed, state perpetrators of human rights violations continued to be wary of the Amnesty Committee and the Commission as a whole.

Reference 1487 - 0.01% Coverage

37. In sharp contrast, most of the killings re c o rded in the human rights violations data are associated with public order policing or so-called 'riot contro l'. 19 two amnesty applications were received in this category.

Reference 1488 - 0.01% Coverage

44. These low figures may be partly explained by the fact that perpetrators seldom seem to have re g a rded torture as a major violation. Evidence of torture often e m e rged only during amnesty hearings and then as part of an amnesty application for an abduction or a killing, not as a human rights violation in its own right. N u m e rous applicants admitted that psychological and physical coercion was routinely used in both legal detentions and unlawful custody.

Reference 1489 - 0.01% Coverage

62. The second application was received from Jacobus Adriaan Huisamen, who served as an SADF Military Intelligence re p resentative on TREWITS in the early 1990s. His application was refused administratively at the outset of the pro c e s s, as it failed to identify specific violations that had resulted from the targets he had developed. In his application and supporting documentation Huisamen made available to the Commission's investigative unit, he made it clear that he believed that t a rget information provided by TREWITS was used operationally and led to the commission of gross violations of human rights that included killing.

Reference 1490 - 0.01% Coverage

104. In addition to the above killings, C/1Vlakplaas and operatives from the Technical Division of Security Branch Headquarters applied for amnesty for the attempted killing of former Vlakplaas commander, Captain Dirk Coetzee. Although the attempt failed, it resulted in the killing of human rights lawyer Bheki Mlangeni.

Reference 1491 - 0.01% Coverage

PA RT THREE: KEY SECURITY FORCE UNITS I N V O LVED IN GROSS HUMAN RIGHTS VIOLATIONS

Reference 1492 - 0.01% Coverage

373. The purpose of this chapter was to examine the extent to which the amnesty p rocess enlarged the Commission's knowledge of the human rights violations committed by the state. By employing the 'carrot and stick' principle adopted in the founding Act, it was hoped that state perpetrators, amongst others,

would take advantage of the opportunities offered by the legislation and, in the process, shed light on state involvement in gross violations of human rights.

Reference 1493 - 0.01% Coverage

The Intersection between the Work of the Human Rights Violations Committee and the Amnesty Committee

Reference 1494 - 0.01% Coverage

1. The purpose of this chapter is to review the information that emerged out of the amnesty process of the Truth and Reconciliation Commission (the Commission) in respect of the African National Congress (ANC) and its allies and to consider its intersection with information that emerged through the processes of the Committee on Human Rights Violations (HRVC).

Reference 1495 - 0.01% Coverage

30. The 'Declaration' applicants did not specify particular acts but attempted to take collective responsibility for actions that may have resulted in gross human rights violations either by the ANC's military operatives or by the SDUs.

Reference 1496 - 0.01% Coverage

98. MK operative Joel George Martins [AM6450/97; AC/2000/157] testified about how he assassinated ANC supporter Benjamin Langa in Pietmaritzburg on 20 May 1984. Langa, a member of a politically active family, was a local activist known to Martins. His brother, Mr Mandla Langa, was a writer of note in exile and another brother, Mr Pius Langa, was a prominent human rights lawyer involved in defending political activists on trial.

Reference 1497 - 0.01% Coverage

144 The last category covers cases that generally did not involve gross human rights violations, including, for example, refusal to serve in the SADF, spraypainting of political slogans, illegal gatherings and the like. 145 Although this section covers the pre-1990 period, these incidents are included here as they specifically relate to the UDF. Most took place in the early months of 1990.

Reference 1498 - 0.01% Coverage

160. Aside from three applications from KwaZulu and Natal, the Amnesty Committee dealt with applications from MHQ personnel administratively as they were not directly linked to gross human rights violations. There is, as a consequence, little detail available on the quantities of weaponry involved, the frequency of handover or the subsequent management or retrieval of such weaponry. There are indications that the distribution of weaponry to SDUs by MHQ was done in a fairly limited way. According to then Deputy President Mbeki, who gave oral evidence at the human rights violations hearing on the ANC:

Reference 1499 - 0.01% Coverage

189. Offences that did not fall into the category of gross human rights violations included the illegal possession of arms and ammunition, the collection of money

Reference 1500 - 0.01% Coverage

198. Furthermore, because clashes between IFP and ANC supporters took the form of skirmishes, with groups opening fire on each other, often at a distance, applicants were frequently unable to state conclusively whether anyone had been injured or killed as a result of their actions, even if they assumed or speculated that deaths and injuries must have occurred. As applicants were usually barely able to recall the year of an incident, let alone the month or day, tracing victims through police and mortuary reports was virtually impossible. Similarly, although the Commission received a number of human rights violation statements relating to these very conflicts, the absence of information about when events took place meant that very few links could be made between victims and amnesty applications.

Reference 1501 - 0.01% Coverage

218. Of these one hundred applications, ninety-three involved hearable matters involving gross human rights violations, while seven were dealt with administratively in chambers. These seven non-hearables involved primarily the illegal possession of arms and ammunition, and were all granted. Of the applications that involved hearings, sixty-eight were granted. Twenty-two were refused. A further three were partially granted and partially refused.

Reference 1502 - 0.01% Coverage

The Intersection between the Work of the Human Rights Violations Committee and the Amnesty Committee

Reference 1503 - 0.01% Coverage

2. Although the IFP appeared before the Commission, the party did not officially cooperate with either the Human Rights Violations Committee or the Amnesty Committee. When he appeared before the Commission, Dr Buthelezi used the opportunity to argue why members and supporters of his party had been drawn into acts of political violence. He told the Commission:

Reference 1504 - 0.01% Coverage

10. All the applicants from the IFP were male. However, a few applicants implicated individual women in their human rights violations.

Reference 1505 - 0.01% Coverage

20. The Committee received seventy applications from ordinary IFP members for human rights violations committed in areas all over KwaZulu/Natal.

Reference 1506 - 0.01% Coverage

21. At the inception of the Commission, the IFP announced that it would not urge its members or IFP victims of gross human rights violations to participate in its processes. In spite of written re p

resentations and personal requests by senior members of the Commission, the IFP did not depart from this position until approximately one month before the cut-off date for the submission of victim statements. At this stage, the party called on its members to apply for reparations. Such a shift of position did not, however, occur with respect to the amnesty process.

Reference 1507 - 0.01% Coverage

33. Many of the IFP applicants applying for amnesty testified that their activities were sponsored by the apartheid government and/ or the homeland government and/ or their political leadership. The Commission was required to investigate these allegations insofar as they shed light on the lines of command, motives and political context in which the IFP applicants were operating. This was particularly necessary in the light of the fact that the leadership of the IFP, unlike other groupings testifying before the Commission, gave no details of human rights violations committed by their members.

Reference 1508 - 0.01% Coverage

54. Mr Daluxolo Luthuli [AM4075/96], grandson of Chief Albert Luthuli, was trained in the Caprivi by members of the SADF. He applied for amnesty for twenty-one incidents of murder and attempted murder in KwaZulu/Natal and admitted to giving orders to ten other applicants who were involved in a total of 165 human rights violations. It emerged in his testimony before the Amnesty Committee that he was the political commissar and commander of hit squads that had been trained in the Caprivi in 1986 and at Mlaba camp in 1993.

Reference 1509 - 0.01% Coverage

74. Mr Thulani Myeza, who was trained at Emandleni camp and applied for amnesty for a number of gross human rights violations in Eshowe, testified that the SPUs were trained in preparation for the 1994 elections. He gave evidence before the Amnesty Committee:

Reference 1510 - 0.01% Coverage

101. A factor mentioned in many incidents was the use of traditional medicine or 'muti' while preparing to perpetrate human rights violations. For example, Mr Phumlani Derrick Mweli, told the Committee:

Reference 1511 - 0.01% Coverage

102. The Committee refused amnesty to any applicant who clearly appeared to be motivated by personal gain when committing a human rights violation. Mr Mdu John Msibi [AM0624/96] applied for amnesty for the killing of ANC members Mr Mandla Alfred Mgudulela and Mr Mphiheleli Joseph Malinga in Piet Retief on 9 June 1993, for which he had been convicted and sentenced.

Reference 1512 - 0.01% Coverage

118. In its 1998 Report, the Commission found that the IFP was responsible for gross violations of human rights committed in the former Transvaal, Natal and KwaZulu against persons who were perceived to be leaders, members or supporters of the UDF, ANC or its alliance partners, and persons identified as posing a threat to the organisation or whose loyalty was doubted¹⁹³

Reference 1513 - 0.01% Coverage

121. With regard to the KwaZulu Police, the Commission found that from the period 1986 to 1994, the KZP acted in a biased manner and overwhelmingly in furtherance of the interests of Inkatha, and later the IFP. This was a view that was also expressed by several amnesty applicants. Although there were exceptions to the following general statement, in that some members of the KZP did carry out their duties in an unbiased and lawful manner, the KZP generally was characterised by incompetence, brutality and political bias in favour of the IFP, all of which contributed to the widespread commission of gross human rights abuses¹⁹⁷

Reference 1514 - 0.01% Coverage

was never the policy of the organisation to engage in violence in furtherance of its political objectives, the Amnesty Committee accepted the evidence of amnesty applicants that they took instructions from certain senior members of the organisation, and that these activities resulted in the commission of gross human rights violations.

Reference 1515 - 0.01% Coverage

124. The Commission gave due attention to the response of the IFP to these and other findings of the Human Rights Violations Committee. However, the Commission is of the view that the evidence which has emerged through the amnesty process has done nothing to cause the Commission to change or moderate these findings in any way. On the contrary, on the completion of the work of the Amnesty Committee, the Commission is satisfied that the core findings made in its 1998 report are justified.

Reference 1516 - 0.01% Coverage

129. Despite the relatively few applications from IFP members, the Amnesty Committee found that the evidence they contained was consistent with the trends and patterns revealed in the testimony of victims of human rights violations who appeared before the Commission and in the documentary material made available to the Commission by state officials.

Reference 1517 - 0.01% Coverage

The Intersection between the Work of the Human Rights Violations Committee and the Amnesty Committee

Reference 1518 - 0.01% Coverage

7. The majority of the amnesty applications related to violations committed between February 1990 and April 1994 and were submitted by members of APLA. Amnesty applications for violations committed in the earlier period were for offences that were not strictly defined as gross violations of human rights. These included activities such as furthering the aims and membership of a banned organisation, the possession of arms and ammunition and harbouring guerrillas in order to further the armed struggle. For the most part, these applications were dealt with in chambers²⁰¹

Reference 1519 - 0.01% Coverage

14. The Commission received evidence indicating that many gross violations of human rights occurred in the ranks of the PAC in exile, mainly in Tanzania. Despite this, only one application for amnesty was received. Amnesty was granted to Mr Mawethu Lubabalo Ntlabathi [AM5693/97] for assaults on Messrs Matsokoshe and Tebogo in a PAC camp in Tanzania in 1992 and 1993, with the approval of its military attaché, Mr Bafana Yose.

Reference 1520 - 0.01% Coverage

Then just thirdly, again on a parity of – because this is what this Committee must do, this is what the Commission as a whole must do is to be even-handed and to treat people in the same fashion. The apartheid government targeted overwhelmingly black people. Coetzee was told to get rid of Griffiths Mxenge and he did so very effectively. Griffiths Mxenge was a well-known human rights activist but he was a black civilian. Brian Mitchell committed the Trust Feeds murder where he killed innocent black young men, woman and children; he slaughtered them. Those were civilians and both of them got amnesty. (Hearing at Pietermaritzburg, 9–11 February 1998.)

Reference 1521 - 0.01% Coverage

280. While the PAC Disciplinary Code encouraged members to air their views 'and to agree or disagree with all or any member of the movement, including the leader ...', there were incidents where action was taken against those who disagreed openly with the leadership. No political education programme was provided for members. Such a programme would have helped members define who the enemy was, rather than inciting the membership to kill whites and their informers in a more general way. Where the enemy was not clearly defined, gross abuses of human rights were inevitable. Some of the violations committed by PAC or Poqo members took place during this period.

Reference 1522 - 0.01% Coverage

296. Most of the human rights violations attributed to APLA took place between 1990 and 1994 while negotiations and eventually the run up to elections were in progress.

Reference 1523 - 0.01% Coverage

311. The Commission gave due attention to the response of the PAC to the findings of the Human Rights Violations Committee. However, the Commission is of the view that the evidence that has emerged through the amnesty process has done nothing to cause the Commission to change or moderate these findings in any way. On the contrary, on completion of the work of the Amnesty Committee, the Commission is able to confirm these findings, particularly those with regard to the activities of the PAC and APLA during the 1990s.²¹⁴

Reference 1524 - 0.01% Coverage

The Intersection between the Work of the Human Rights Violations Committee and the Amnesty Committee

Reference 1525 - 0.01% Coverage

The Intersection between the Work of the Human Rights Violations Committee and the Amnesty Committee

Reference 1526 - 0.01% Coverage

50. The first category deals with right-wing attacks on individuals, on those perceived to have betrayed the nationalist ideal and on black persons insofar as race determined the notion of the 'enemy'. Few human rights violations were committed by right-wing groups during the 1960s and 1970s.

Reference 1527 - 0.01% Coverage

236 In terms of Section 29 of the Act, witnesses and alleged perpetrators could be subpoenaed in order to 'establish the fate or whereabouts of victims' and the identity of those responsible for human rights violations.

Reference 1528 - 0.01% Coverage

112. Lottering's escape from legal custody did not involve any gross violation of human rights and the applicant continued to serve the Orde van die Dood in the period following his escape until his release. The Committee granted amnesty to Lottering in respect of his escape from custody [AC/1998/0025].

Reference 1529 - 0.01% Coverage

became a recurring theme in the militant rhetoric of the right-wing leaders and a central motivating factor in the planning and execution of operations that resulted in gross violations of human rights.

Reference 1530 - 0.01% Coverage

Report of the Human Rights Violations Committee

Reference 1531 - 0.01% Coverage

12. The Commission had recourse to a number of working definitions developed by human rights groups working in the field. One such was the definition used by Amnesty International, which defined 'disappeared persons' as those 'who have been taken into custody by agents of the State, yet whose whereabouts and fate are concealed, and whose custody is denied'¹

Reference 1532 - 0.01% Coverage

¹ Bronkhorst, Dahan, Truth and Reconciliation: Obstacles and Opportunities for Human Rights. Amsterdam: Amnesty International – Dutch Section, 1995.

Reference 1533 - 0.01% Coverage

HOW DISAPPEARANCES RELATE TO OTHER HUMAN RIGHTS VIOLATIONS

15. Disappearances are inextricably bound up with other human rights violations. Often a disappearance is an unacknowledged form of imprisonment for political reasons. In many instances, a disappearance took place during the first days of custody and, more often than not, resulted in a political killing.

Reference 1534 - 0.01% Coverage

24. When governments are addressed on this issue – either by the international community or by human rights groups – they often reply that the person has fled the country and gone into exile. In a number of cases in South Africa, the former state sought to blame the liberation movements for a disappearance. When laying complaints or seeking answers from the police, families were frequently advised that the disappeared had probably gone into exile. The state encouraged families to believe this and, in some instances, staged elaborate hoaxes to hide the fact that it was responsible for the disappearance. The cases of Mr Stanza Bopape, Ms Portia Ndwande and Mr Moss Morudu are just a few examples.

Reference 1535 - 0.01% Coverage

50. Similarly, Mr Ramatua Nicholas 'Boikie' Thlapi [JB01185/03NW, JB0118/03NW, JB01187/03NW, JB01452/03NW] disappeared following his arrest in 1986. 'Boikie' Thlapi and his friends left Ikageng near Potchefstroom on 20 March 1986 to attend a funeral wake in Klerksdorp for those killed by police during unrest. The group was arrested at a roadblock and taken to Stilfontein, where they were allegedly subjected to beating and electric shock torture. One of those arrested later told Mr Thlapi (Snr) that he had last seen 'Boikie' lying on the floor of a cell, bleeding from the mouth and nose. Police later conceded that 'Boikie' Thlapi had been arrested, but claimed that he had been released. Despite extensive investigations by, amongst others, the Independent Board of Inquiry and Lawyers for Human Rights, as well as an inquest hearing, the fate of 'Boikie' Thlapi remains unknown. None of the police officers involved in his arrest and detention applied for amnesty. The facts of this particular case warrant a new investigation and possibly future prosecutions.

Reference 1536 - 0.01% Coverage

67. These disappearances place a specific responsibility on liberation movements to assist in establishing the fate of the missing. The Commission notes and acknowledges that, of all the liberation movements, the ANC – despite operating in conditions of hostility and ongoing threats of infiltration – nonetheless maintained records of its membership. It is clear from a number of human rights violations (HRV) statements that, during the years of conflict, the ANC informed many families of the deaths of loved ones in exile or in combat. In some cases, attempts were made to enable them to attend funerals.

Reference 1537 - 0.01% Coverage

82. It must be said from the outset that investigating disappearances requires a very focused, multi-faceted approach, a dedicated investigation unit with expertise in investigating human rights violations, good research capacity and specialised forensic skills.

Reference 1538 - 0.01% Coverage

87. The Commission received more than 22 000 HRV statements. Most statements contained information relating to multiple victims, requiring the Commission to verify more than 40 000 individual cases. Most statements also referred to more than one violation, thus significantly increasing the number of

violations to be corroborated. Although it was impossible for the Commission to investigate each individual case, it was obliged to make victim findings, the effect of which was to make victims and their families eligible for reparation. As a result, the Commission adopted a policy of low-level corroboration when determining whether or not a person was a victim of a gross violation of human rights. In

Reference 1539 - 0.01% Coverage

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

98. The United Nations has condemned disappearances as a grave violation of human rights and has stated that their systematic practice is 'a crime against humanity'. In 1998, the Working Group on Involuntary or Enforced Disappearances issued a General Comment to Article 19 of the 1992 Declaration on the Protection of All Persons from Enforced Disappearance.¹⁷

Reference 1540 - 0.01% Coverage

¹⁶ For relevant articles in the Geneva Conventions see GCIV, Art 26; in Additional Protocol I see Articles 32, 33 and 74. Although the category of missing persons is not specifically addressed in Additional Protocol II dealing with non-international armed conflicts, there nonetheless remains an obligation to search and account for such persons in terms of customary international law. While the Geneva Conventions address the issue of persons missing as a result of hostilities, certain aspects of international human rights law address the issue of enforced disappearances and abductions. See, for example, the UN Declaration on the Protection of All Persons from Enforced Disappearance and Article 7 of the International Criminal Court Statute. A Draft Convention on the Protection of All Persons from Forced Disappearance obliges states to define enforced disappearances as common-law crimes and prohibits the granting of amnesty to perpetrators who have not been brought to trial and convicted (Articles 5 & 17). Aside from formal international instruments, considerable jurisprudence has developed, especially in Latin America, where the use of enforced disappearances was used on a vast scale. ¹⁷ Report of the Working Group on Enforced or Involuntary Disappearances, E/CN.4/1998/43, 12 January 1998 at 16.

Reference 1541 - 0.01% Coverage

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

Reference 1542 - 0.01% Coverage

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

Reference 1543 - 0.01% Coverage

Report of the Human Rights Violations Committee

Reference 1544 - 0.01% Coverage

26. The compilation of a comprehensive report on exhumations was one of the major tasks assigned to the Human Rights Violations (HRV) Committee in the period after the handing over of the Commission's Final Report in October 1998.

Reference 1545 - 0.01% Coverage

Report of the Human Rights Violations Committee

Reference 1546 - 0.01% Coverage

1. The duties and functions of the Human Rights Violations Committee (HRVC) were clearly defined in section 14 of the Promotion of National Unity and Reconciliation Act No. 34 of 1995 (the Act). The HRVC was mandated to enquire into systematic patterns of abuse; to attempt to identify motives and perspectives; to establish the identity of individual and institutional perpetrators; to find whether violations were the result of deliberate planning on the part of the state or liberation movements, and to designate accountability, political or otherwise, for gross human rights violations.

2. During the operational phase, the HRVC was responsible for gathering victim statements and the holding of hearings – including victim hearings, event hearings, special hearings, institutional hearings and political party hearings. It was greatly assisted in its work by the Investigation Unit of the Truth and Reconciliation Commission (the Commission). The Committee was also responsible for making findings confirming that victims had been the subject of gross human rights violation as defined in the Act. The HRVC acted as the engine of the Commission.

Reference 1547 - 0.01% Coverage

4. The HRVC collected a total of 21 519 victim statements during the two-year operational period. More than 15 000 statements contained at least one gross human rights violation. All in all, the 21 519 statements contained more than 30 384 violations. The HRVC made more than 15 000 findings during this period and completed all of its hearings, as was required in terms of its mandate.

Reference 1548 - 0.01% Coverage

The HRVC was required to make findings confirming that persons making statements were victims of gross human rights violations as defined in 31 See Volume One, 'Methodology'. VOLUME 6 SECTION 4 CHAPTER 3 PAGE 570

Reference 1549 - 0.01% Coverage

11. The tasks outstanding at December 1998 were identified by the HRVC as the following: a. Making victim findings on the remaining statements received and confirming the gross human rights violations suffered by victims. As at December 1998, these numbered 5500 in total.

Reference 1550 - 0.01% Coverage

15. Earlier findings had been affected by the fact that the HRVC had taken a long time to finalise its policy on what constituted 'severe ill-treatment', one of the violation categories defined in the Act. Initially, the Commission did not treat cases of arson and displacement as gross violations of human rights under this category. However, the nature of the violations emanating from KwaZulu-Natal challenged the narrow definitions originally adopted. Arson and displacement (together with political killings and massacres) were the predominant type of violation during the post-1990s conflict, particularly in KwaZulu-Natal and Gauteng.

Reference 1551 - 0.01% Coverage

20. In a major effort to finalise the KwaZulu-Natal matters, the Commission accessed the records of various groups that had monitored the violence in the province during the conflict years. These included the reports of the Human Rights Commission³⁴

Reference 1552 - 0.01% Coverage

34 Now known as the 'Human Rights Committee'. , the reports of John Aitcheson and Mary de Haas, as well
VOLUME 6 SECTION 4 CHAPTER 3 PAGE 574

Reference 1553 - 0.01% Coverage

2. The early 1990s witnessed unprecedented levels of political violence, with over 14 000 people killed and many more thousands injured. Although violence permeated the country, most violations occurred in the homeland of KwaZulu and the neighbouring Natal province, and in the PWV (Pretoria – Witwatersrand – Vereeniging) region of the Transvaal. In the latter region, the Human Rights Commission (an independent non-governmental organisation) estimated that some 4756 people were killed between July 1990 and June 1993 alone. While many of these killings can be attributed to the internecine conflicts that developed in many communities, primarily between supporters of the IFP and ANC, there were frequent allegations about the role and complicity of elements within the security forces.

Reference 1554 - 0.01% Coverage

analysed the first twelve months of Reef violence and highlighted the major actors, victims and alleged patterns of control of the violence that erupted during the period from 22 July 1990 to 31 July 1991. The report was based on thousands of reports from a range of newspapers and figures published by human rights monitoring organisations, including the Independent Board of Inquiry into Informal Repression (IBIIR), the Human Rights Commission (HRC), the Centre for Applied Legal Studies (CALS) and Lawyers for Human Rights.

Reference 1555 - 0.01% Coverage

28. The Commission thus finds that, while little evidence exists of a centrally directed, coherent or formally constituted 'Third Force', a network of security and exsecurity force operatives, frequently acting in conjunction with right-wing elements and/or sectors of the IFP, was involved in actions that could be construed as fomenting violence and which resulted in gross human rights violations, including random and target killings.⁴⁰

Reference 1556 - 0.01% Coverage

■ INVESTIGATING GROSS HUMAN RIGHTS VIOLATIONS

1. The Truth and Reconciliation Commission (the Commission) was charged with the task of investigating and documenting gross violations of human rights committed during the period March 1960 to May 1994. In the course of doing so, it was required to compile as complete a picture as possible of the conflicts of the past.

DEFINING GROSS HUMAN RIGHTS VIOLATIONS

2. The Promotion of National Unity and Reconciliation Act No. 34 of 1995, (the Act) defined a gross human rights violation as:

the violation of human rights through (a) the killing, abduction, torture or severe ill-treatment of any person; or (b) any attempt, conspiracy, incitement, instigation, command or procurement to commit an act referred to in paragraph (a), which emanated from conflicts of the past and which was committed during the period 1 March 1960 to the cut-off date [10 May 1994] within or outside the Republic, and the commission of which was advised, planned, directed, commanded or ordered, by any person acting with a political motive;¹

3. The language used in the Act to describe gross human rights violations deliberately avoided the use of terms associated with the legal definitions of crimes in South African law. Thus 'killing' was used rather than 'murder' in order to allow the Commission to examine these violations without having to consider legal justifications or defences used by perpetrators for such conduct. The Commission could therefore make findings that those who had suffered these violations were victims. Chapter Four of Volume One sets this out more elaborately.

Reference 1557 - 0.01% Coverage

2 These interpretations reflect the Commission's position on the death penalty and political killings, which is in line with international human rights law.

Reference 1558 - 0.01% Coverage

8. This term was defined as the 'forcible and illegal removal or capturing of a person'. It was applied to those cases where people had 'disappeared' after having last been seen in the custody of the police or of other persons who were using force. It does not include those who were arrested or detained in terms of accepted human rights standards.

Reference 1559 - 0.01% Coverage

11. One of the main objectives of the Commission was to establish the identity of the individuals, authorities, institutions and organisations involved in the commission of gross violations of human rights. The Commission was also tasked with establishing accountability for the violations, and determining the role played by those who were involved in the conflicts of the past. In dealing with these complex issues, the Commission was guided by the provisions of section 4 of its enabling Act.

Reference 1560 - 0.01% Coverage

A responsible society is committed to the affirmation of human rights and, to addressing the consequences of past violations) which presupposes the acceptance of individual responsibility by all those who supported the system of apartheid or simply allowed it to continue to function and those who did not oppose violations during the political conflicts of the past.

15. In the Final Report, the Commission defines not only legal and political accountability, but also boldly asserts the notion of moral responsibility. The Commission finds that all South Africans are required to examine their own conduct in upholding and supporting the apartheid system. The abdication of responsibility, the unquestioning obeying of commands, submitting to fear of punishment, moral indifference, the closing of one's eyes to events or permitting oneself to be intoxicated, seduced or bought with personal advantages are all part of the multi-layered spiral of responsibility that lays the path for the large-scale and systematic human rights violations committed in modern states.

16. There were those who were responsible for creating and maintaining the brutal system of apartheid; those who supported this brutal system and benefited from it, and those who benefited from the system simply by being born white and enjoying the privileges that flowed from that. Others occupied positions of power and status and enjoyed great influence in the apartheid system, even though they had no direct control over the security establishment and were not directly responsible for the commission of gross human rights violations. It is only by acknowledging this benefit and accepting this moral responsibility that a new South African society can be built. What is required is a moral and spiritual renaissance capable of transforming moral indifference, denial, paralysing guilt and unacknowledged shame into personal and social responsibility. This acceptance of moral responsibility will allow all those who benefited from apartheid – including the business community and ordinary South Africans – to share in the commitment of ensuring that it never happens again.

Reference 1561 - 0.01% Coverage

17. Those who must come under special scrutiny are those who held high office, those who occupied positions of executive authority and those cabinet ministers whose portfolios did not place them in a direct supervisory capacity over the security forces. While the Commission's findings are not judicial findings, the Commission finds them to be morally and politically responsible for the gross human rights violations committed under the apartheid system, given: a the specific responsibilities of cabinet ministers who oversaw aspects of the apartheid structure in areas that formed key aspects of apartheid's inhumane social fabric (education, land removals, job reservation, the creation of the Bantustans, for example); b the knowledge they had (given the extensive information regarding apartheid crimes in the public domain), or the knowledge that they are presumed to have had, given their access to classified information – at the highest level – about gross violations of human rights, and c their power to act, given their official leadership positions.

Reference 1562 - 0.01% Coverage

Implications of this classification for the prosecution of human rights crimes under apartheid

21. While executing its mandate, the Commission gained a deep understanding of the apartheid system as a whole and its systematic discrimination and dehumanisation of those who were not white. Moreover, the Commission received a number of submissions from various institutions and structures, requesting that it interpret its mandate more broadly than was defined in the founding Act. Whilst taking these submissions very seriously, the Commission was bound by its legislative mandate to give attention to human rights violations committed as specific acts, resulting in killing, abduction and severe physical and/or mental injury, in the course of the past conflict. Although the Commission endorsed the internationally accepted position that apartheid was a crime against humanity, the focus of its work was not on the effects of the laws and policies passed by the apartheid government. The Commission has been criticised in some quarters for this approach.

Reference 1563 - 0.01% Coverage

37. The Geneva Conventions were adopted in 1949 and additional Protocols I and II in 1977. The Conventions are considered to be binding in international law. Virtually every government in the world has accepted their tenets by ratifying them. However, even where states have not ratified the treaty, they have the force of 'customary international law' – that is, they bind governments irrespective of whether those governments have formally ratified the treaty accepting their obligations. The apartheid state acceded to the Geneva Conventions in 1952. It did not, however, ratify or accept the additional protocols, and sought to argue that it could not be bound by their provisions. However, because the international community does not regard ratification as a criterion for holding a state to be bound, it is generally accepted that, even though the previous government did not ratify these conventions, it was formally bound by the principles enunciated by these bodies during the relevant period, as they are expressions of customary international law on state responsibility for the commission of gross human rights violations.

Reference 1564 - 0.01% Coverage

41. These definitions become important when dealing with those acts or means used during conflict which the Commission found to constitute gross human rights violations. Furthermore, the provisions of the relevant Conventions and Protocol I become particularly important when dealing with the bombing incidents (Khotso House, the Magoo and Why Not Bars, the London ANC office and so on).

Reference 1565 - 0.01% Coverage

60. The doctrine of state responsibility has emerged through the development of customary international law. In summary, it states that the state is accountable for the commission of gross human rights violations as follows: a It is strictly responsible for the acts of its organs or agents or persons acting under its control.

b It is responsible for its own failure to prevent or adequately respond to the commission of gross human rights violations.

61. It is important to note that South Africa did not until recently become a state party to the principal international human rights instruments. In 1998, the newly democratically elected government ratified the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide convention) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

62. This does not mean that South Africa was not bound by these principles of customary international law at the relevant times. They are regarded as expressions of customary international law on state responsibility for human rights violations and have emerged from the broad rubric of human rights law, which includes the Conventions referred to above, the Universal Declaration of Human Rights, regional human rights instruments such as the European Convention for the Protection of Human Rights and Fundamental Freedoms, the American Convention for Human Rights, the African Charter on Human and People's Rights, and the judgments of the various human rights bodies such as the decisions of the European Court of Human Rights, the Inter-American Court and Commission of Human Rights and the Human Rights Committee.

Reference 1566 - 0.01% Coverage

Interpretation of these principles by international human rights bodies, which have application to the question of state accountability

65. In the Velasquez-Rodriguez case¹⁶, the Inter-American Commission on Human Rights held that states are strictly responsible for the conduct of their organs or agents who violate human rights norms, whether or not such actors have overstepped the limits of their authority.

Reference 1567 - 0.01% Coverage

69. A difficulty that has been identified in matters of this nature is that the state is the repository of information and is also the party most interested in suppressing the truth. Circumstantial evidence is often all that exists. International human rights law is cognizant of this and thus places the burden on the state to justify its actions in the face of credible allegations of abuses by state agents.

¹⁶ The Inter-American Court of Human Rights, 29 July 1988 (Series C, No. 4) VOLUME 6 SECTION 5 CHAPTER 1 PAGE 603

70. In the case of Kurt v Turkey¹⁷, the European Court of Human Rights held that,

Reference 1568 - 0.01% Coverage

71. In the case of Ireland v UK, the European Court of Human Rights applied a strict liability test when dealing with the government of the United Kingdom. In this case, the European Court considered allegations by the Irish¹⁸

Reference 1569 - 0.01% Coverage

Kingdom authorities operating in Northern Ireland were engaged in practices that violated Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In particular, the Irish alleged that these practices

Reference 1570 - 0.01% Coverage

74. The development of the principle of strict liability in dealing with states reinforces that liability in international law. In other words, the state is under an obligation to organise its institutional apparatus so as to ensure that fundamental human rights are protected and, where they are violated, to 'investigate and punish those responsible and to provide reparation to the victim'.

¹⁷ 74 Reports of Judg. Dec. 1152, 1998 111. ¹⁸ Ireland v United Kingdom (1978) 25 European Court of Human Rights (Series A).

Reference 1571 - 0.01% Coverage

75. International human rights law has evolved to the point where states can be held responsible because they have failed to prevent a violation or to respond to violations as required by international law.

Reference 1572 - 0.01% Coverage

78. The Inter-American Court of Human Rights noted as follows:

Reference 1573 - 0.01% Coverage

81. The key factor in testing responsibility is whether a human rights violation has been committed with the support or tolerance of the public authority or if the state has allowed the violation to go unpunished.¹⁹

82. The European Court of Human Rights has also held that private citizens may hold the state responsible for tolerating human rights abuses that have been carried out. Thus for example, a state whose legal framework leaves individuals vulnerable to violations of their fundamental rights without adequate recourse, or fails to enact laws restraining the excessive use of force by the authorities, or neglects to punish such abuses, may be held accountable at the international level for failing to guarantee rights recognised under international law.

¹⁹ See Godinez-Cruz, *Inter-American Court of Human Rights*, 20 Jan 1989 (Series C No. 5) ; Gangaram Panday, *Inter-American Court of Human Rights*, 21 Jan 1994 (Series C No. 16) .

Reference 1574 - 0.01% Coverage

played by those who were involved in the conflicts of the past. The relevant sections read as follows: The functions of the Commission shall be to achieve its objectives, and to that end it shall – (a) Facilitate and where necessary initiate or co-ordinate, enquiries into.... (i i i) The identity of all persons, authorities, institutions and organizations involved in gross violations of human rights;

Reference 1575 - 0.01% Coverage

2. Describing how findings were made, the Commission stated: ... the Commission is of the view that gross violations of human rights were perpetrated in the conflicts of the mandate era. These include:

Reference 1576 - 0.01% Coverage

5. Whilst the Commission was obliged by its enabling act to evaluate the conduct of all those responsible for committing gross human rights violations, the Commission did not hold that all parties were equally responsible for the violations committed in the mandate period. Indeed, the evidence before the Commission has revealed that the former state was the major violator.

Reference 1577 - 0.01% Coverage

The predominant portion of gross violations of human rights was committed by the Former State through its security and law-enforcement agencies.

Reference 1578 - 0.01% Coverage

sions have tended to support the original findings of the Commission. In dealing with the findings and an analysis of the amnesty process, it is necessary to review how international humanitarian law has evolved to deal with conflicts and gross human rights violations.

Reference 1579 - 0.01% Coverage

9. The Commission made findings against the South African government and its security forces based on the information it received. These included statements from victims, submissions by organs of civil society, political parties, international human rights groups, local non-governmental organisations (NGOs)

and community-based organisations (CBOs), confessions made by amnesty applicants and many other interested parties.

10. It was, however, the statements made by individual victims and perpetrators to the Commission that presented the most compelling picture of the reign of terror conducted by the organs and agencies of the former state. Overwhelmingly, these statements revealed a picture of the gross human rights violations that were perpetrated by the state. These included the widespread use of torture, the use of excessive and indiscriminate force in public order policing, the abduction and disappearance of activists and the extrajudicial killing of political opponents and activists.

Reference 1580 - 0.01% Coverage

12. In order to ensure the integrity of the information that it received, the Commission applied a policy of low-level corroboration to each case before declaring a person to have been a victim. Many have criticised this policy. However the Commission did not have the capacity to conduct a full-scale investigation into each case. Therefore, it selected cases and conducted strategic investigations. The Commission acknowledges the fact that more thorough investigations may have yielded more information about particular individuals and incidents. However, it is the Commission's view that it is unlikely that this would have impacted on its view of the role that the former state played in the commission of gross human rights violations, nor on its view that the former state acted in a criminal manner.

Reference 1581 - 0.01% Coverage

14. The Commission recorded the fact that patterns of abuse manifested themselves throughout South Africa in much the same way. These were not isolated incidents or the work of mavericks or 'bad apples'; they were the product of a carefully orchestrated policy, designed to subjugate and kill the opponents of the state. In any event, the Commission's findings are supported by the submissions made by many victims to various human rights organisations during the apartheid period.

Reference 1582 - 0.01% Coverage

Categories of gross human rights violations defined in the Act State responsibility for torture

Reference 1583 - 0.01% Coverage

18. The Human rights instruments that are pertinent to the question of torture include: a. The International Covenant on Civil and Political Rights; b. The Convention Against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment, and

Reference 1584 - 0.01% Coverage

21. The Commission made its findings on torture based on evidence received from victims through the human rights violations process, perpetrators in amnesty applications and evidence given before the Commission by senior politicians and security force officials of the former government. In addition, local and international human rights groups made a number of submissions to the Commission, based on the studies they had carried out during the apartheid period.

Reference 1585 - 0.01% Coverage

24. It is important to note that, although the Commission received over 22 000 statements from victims and only very few amnesty applications for torture , many human rights groups estimated that more than 73 000 detentions took place in the country between 1960 and 1990. It was established practice for torture to accompany a detention. Detention, arrest and incarceration without formal charges were commonplace in South Africa at that time. Whilst a plethora of laws existed to silence political dissent, the notorious section 29 of the Internal Security Act 74 was used to detain people indefinitely, without access to a lawyer, family member, priest or physician. Section 29 also permitted the state to hold a detainee in solitary confinement.

Reference 1586 - 0.01% Coverage

35. The principles that have been enunciated earlier in this chapter can be summarised as follows: a The state is held strictly responsible for the conduct of its agents who commit gross violations of human rights.

Reference 1587 - 0.01% Coverage

36. A key factor here is proving that the human rights violation took place with the support or tolerance of public authority or that the state allowed the violation to go unpunished.

Reference 1588 - 0.01% Coverage

42. A number of human rights bodies made representations to the state about the treatment of detainees and persons in custody. In April 1982, the Detainees Parents Support Committee met with the Minister of Law and Order and the Minister of Justice to submit a dossier that included seventy-six statements alleging torture. The dossier named ninety-five individuals as perpetrators and covered the period 1978 to 1982. The ninety-five individuals were all members of the Security Branch and came from eighteen different branch offices. Of the eighteen offices detailed, John Vorster Square, Protea police station and the office in Sanlam building in Port Elizabeth headed the list. A report was subsequently made to parliament, which was informed that forty-three of these cases had been investigated and that eleven of the claims were unfounded. Presumably the remaining thirty-one were found to be of substance, yet no action was taken.

Reference 1589 - 0.01% Coverage

45. The state did not bother to ensure that the directives were explained and no system was put in place to monitor whether detainees were being treated properly or that their human rights were being safeguarded.

Reference 1590 - 0.01% Coverage

63. International human rights law places the burden on the state to account for the actions of its agents. Thus it is not sufficient for the state to allege (as it did in the cases of Nokuthula Simelane³⁴

Reference 1591 - 0.01% Coverage

64. In all of these cases, using the strict liability test, it is likely that the state would be held criminally liable for their disappearances. In the case of Kurt v Turkey, the European court of human rights held that,

once the applicant was in the custody of the security forces, the responsibility to account for the victim's subsequent fate shifted to the authorities.

65. In terms of international law and a state's responsibility to guarantee human rights, a state can be held responsible for failing to prevent or respond to a violation. As early as the 1980s, the former state was aware of the fact that disappearances were taking place. Allegations were mounting against the security forces as being responsible.

Reference 1592 - 0.01% Coverage

67. Although it has been shown that agents in the employ of the state were responsible for the abductions of many political activists, that a pattern had been established and that this had become part of an orchestrated grand plan, the leadership of the former state continued to deny its responsibility for these gross human rights violations. Indeed, in the light of the above, Mr de Klerk might want to reconsider his theory of 'bad apples and mavericks'³⁶

Reference 1593 - 0.01% Coverage

124. Using this principle, all former heads of the apartheid state could be held responsible for the commission of gross human rights violations committed by their agents.

Reference 1594 - 0.01% Coverage

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

Reference 1595 - 0.01% Coverage

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

Reference 1596 - 0.01% Coverage

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.

Reference 1597 - 0.01% Coverage

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

Reference 1598 - 0.01% Coverage

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^{5 7}

Reference 1599 - 0.01% Coverage

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.

Reference 1600 - 0.01% Coverage

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)^{6 1}

Reference 1601 - 0.01% Coverage

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 landmines – 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.

Reference 1602 - 0.01% Coverage

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.

Reference 1603 - 0.01% Coverage

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.

Reference 1604 - 0.01% Coverage

52. The Commission made the following findings against the UDF: 6.4 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.

Reference 1605 - 0.01% Coverage

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;

Reference 1606 - 0.01% Coverage

- 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.

Reference 1607 - 0.01% Coverage

- 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.

Reference 1608 - 0.01% Coverage

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.

Reference 1609 - 0.01% Coverage

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.

Reference 1610 - 0.01% Coverage

GROSS VIOLATIONS OF HUMAN RIGHTS COMMITTED BY THE ANC IN EXILE

Reference 1611 - 0.01% Coverage

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.

Reference 1612 - 0.01% Coverage

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

Reference 1613 - 0.01% Coverage

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.

Reference 1614 - 0.01% Coverage

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):

Reference 1615 - 0.01% Coverage

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

Reference 1616 - 0.01% Coverage

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.

Reference 1617 - 0.01% Coverage

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?

Reference 1618 - 0.01% Coverage

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.

Reference 1619 - 0.01% Coverage

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

Reference 1620 - 0.01% Coverage

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.

Reference 1621 - 0.01% Coverage

In the past 12 years, since the Teheran conference on Human Rights, the development of international law under the auspices of the United Nations has led to a r e c o g n i t i o n that the concept of international armed conflict extends to cover wars of national liberation. The International Conference on the Reaffirmation and Development of I n t e rnational Humanitarian Law Applicable in Armed Conflicts, held in Geneva fro m 1974 to 1977, gave concrete expression to such a development.

Reference 1622 - 0.01% Coverage

The IFP was responsible for the commission of gross violations of human rights in the former Transvaal, Natal and KwaZulu, against persons who were perceived to be leaders, members or supporters of the UDF, the ANC or its alliance partners

Reference 1623 - 0.01% Coverage

h c reating a climate of impunity by expressly or implicitly condoning gross human rights violations and other unlawful acts committed by members of the IFP.

Reference 1624 - 0.01% Coverage

5. The Commission found that this illegal deployment of the Caprivi trainees led to g ross violations of human rights, including killing and attempted killing, for which it found former President PW Botha, General Magnus Malan and Dr MG Buthelezi accountable.

Reference 1625 - 0.01% Coverage

b it was responsible for large numbers of politically motivated gross human rights violations (killings, attempted killings, incitement and conspiracy to kill, s e v e re ill-treatment, abduction, torture and arson), the victims of which were almost exclusively non-IFP members;

Reference 1626 - 0.01% Coverage

In conclusion, the Commission found that, although there were honourable exceptions in that some members of the KZP did carry out their duties in an unbiased and lawful manner, the KZP generally was characterised by incompetence, brutality and political bias in favour of the IFP, all of which contributed to the widespread commission of gross human rights during the period under review.

Reference 1627 - 0.01% Coverage

While the TRC found no evidence of wrongdoing, or a specific violation of human rights by Dr Buthelezi, it seeks to hold him accountable for the generic violation of human rights. This is legally obscene and morally repugnant. One is politically accountable when certain actions may be the consequence of the policies adopted by a leader. But Minister Buthelezi never adopted any policy other than non-violent passive resistance and the echoing demand for all-inclusive negotiations, which in the final analysis were exactly what caused the demise of apartheid and led to the birth of the new South Africa.

Reference 1628 - 0.01% Coverage

15. Mr Mncwango is not correct in his assertion that 'the TRC found no evidence of wrongdoing, or a specific violation of human rights by Dr Buthelezi ...'. The Commission did in fact make findings against Dr Buthelezi himself. The Commission found that Dr Buthelezi knew that the Caprivi trainees were to be illegally deployed in an offensive manner against people perceived to be antiInkatha and was aware that such armed resistance would entail the risk of unlawful death and injury. He was held accountable for killings and attempted killings. The Commission also found that, with regard to the SPUs and the establishment of the Mlaba Camp in the 1993/4 pre-election period, one of the aims of the training was to furnish Inkatha with the military capacity forcibly to prevent the holding of elections, and that Dr Buthelezi was aware that such armed resistance would entail the risk of unlawful death and injury. The Commission found that the SPU project constituted a conspiracy to commit gross human rights violations, for which, inter alia, Dr Buthelezi was held accountable.

Reference 1629 - 0.01% Coverage

22. Dr Buthelezi and the IFP (the Applicants) complained that some thirty-seven findings contained in the Commission's Report – which implicated them in gross human rights violations, criminality and conspiracy – could not have been based on factual and objective information. The Applicants also contended that the Commission had failed to comply with fair procedures and did not afford them a proper and appropriate opportunity to make representations to it in respect of evidence in its possession and the findings it intended to make. The Applicants complained that the findings unjustifiably infringed their entitlement to a good name and reputation and have impaired their right to dignity and political activity free of unwarranted attack. They complained that the findings in question represented a failure by the Commission, its commissioners and employees to apply their minds to the evidence, as there was no rational connection between the factual evidence and the findings made.

Reference 1630 - 0.01% Coverage

The Commission heard evidence of the involvement of Caprivi trainees in the KwaMakhutha massacre on 21 January 1987 in which thirteen people, mostly women and children, were killed and several others injured in the AK-47 attack on the home of UDF activist Bheki Ntuli. A large number of people including former Minister of Defence General Magnus Malan and MZ Khumalo of the IFP, were tried for murder in 1996 in the Durban Supreme Court. Although the accused were acquitted, the Supreme Court found that Inkatha members trained by the SADF in the Caprivi were responsible for the massacre and that the two state witnesses, being members of the SADF's Directorate of Special Tasks, were directly involved in planning and execution of the operation. The court was not able to find who had provided backing for the attack. The Commission is mindful of the fact that senior members of the former SA Defence Force and Inkatha were acquitted in this lengthy trial on charges of murder and conspiracy to murder. In its findings, the Commission explains fully, in Volume 3 (Regional Profile) as well as in volume 5 (Findings Volume), the basis upon which it found, on a balance of probabilities, that the SADF and Inkatha are nonetheless accountable for the human rights violations committed by Caprivi trainees.

Reference 1631 - 0.01% Coverage

198 Inkatha dominated the KwaZulu government (both its executive and its bureaucracy) to the extent that the government and Inkatha became interchangeable concepts. The organization effectively ruled the KwaZulu government as a one-party state and used KwaZulu government resources and finances to fund Inkatha party-political activities and in the execution of gross human rights violations against non-

Inkatha supporters. The KZP came into existence in 1981 and was disbanded in 1994 following the April 1984 elections. Chief Buthelezi was the only ever serving Minister of Police in KwaZulu. Violations committed by the KZP are dealt with later in this report.

Reference 1632 - 0.01% Coverage

findings that in certain instances, KwaZulu Government resources and finances were used to fund party-political activities and in the execution of gross human rights violations against non-Inkatha supporters. The KZP came into existence in 1980 and was disbanded and integrated into the SAPS in 1994 following the April 1994 elections. Chief Buthelezi was the only ever serving Minister of Police in KwaZulu. Violations committed by the KZP are dealt with later in this report. The SA Commissioner of Police retained a measure of control over the KZP.

Reference 1633 - 0.01% Coverage

2 7 9 The role of the IFP in the political violence in the early nineties is dealt with under the relevant sections of the Commission's report. In brief, the IFP was found to be the foremost perpetrator of gross human rights violations in KwaZulu and Natal during this period. Approximately 9 000 gross human rights violations were perpetrated by Inkatha in KwaZulu and Natal from 1990 to May 1994. This constituted almost fifty per cent of all violations reported to the Commission's Durban office for this period and over one-third of the total number of gross human rights violations reported for the thirty-four-year period of the Commission's mandate.

Reference 1634 - 0.01% Coverage

2 7 9 The role of the IFP in the political violence in the early 90s is dealt with under the relevant sections of the Commission's report. In brief, the statistical evidence, based on statements made to the Commission by witnesses, indicates that the foremost perpetrators of gross human rights violations (GHRVs) in KwaZulu and Natal for this period, were persons who were named by witnesses as being supporters of, or aligned to, the IFP. Approximately 9000 GHRVs were perpetrated by such persons in KZN and Natal from 1990 – 1994, which constituted 50% of all violations reported to the Commission's Durban office for this period, and over 33% of the total number of GHRVs reported for the 34 year period of the Commission's mandate. However, in the light of the fact that the vast majority of members and supporters of the IFP stayed away from the Commission, the Commission was denied the opportunity of recording the testimonies of the large numbers of IFP members and supporters who were victims of violence at the hands of supporters of the ANC or its affiliates. Accordingly, any statistical data concerning the respective culpability of the IFP and the ANC during these years, must be seen and understood in the light of the above.

Reference 1635 - 0.01% Coverage

2 8 5 Inkatha supporters were also responsible for the commission of gross human rights violations in the province of KwaZulu/Natal in the run-up to the 1994 elections, when the IFP engaged in a campaign to disrupt the electoral process. During this period, Inkatha received arms and ammunition from right-wing organisations as well as sections of the security forces and embarked upon paramilitary training projects in which IFP supporters were trained in weapons handling and paramilitary tactics. This campaign continued until 29 April, just six days before the elections, when the IFP announced that it would contest the elections. The Commission found that approximately 3 000 gross human rights violations were

perpetrated by Inkatha in KwaZulu and Natal from July 1993 to May 1994. This constituted more than 55 per cent of all violations reported to the Commission's Durban office for this period.

Reference 1636 - 0.01% Coverage

2 8 5 Inkatha supporters were also responsible for the commission of gross human rights violations in the province of KwaZulu/Natal in the run-up to the 1994 elections which seriously disrupted the process leading up to the elections. During this period, certain senior IFP members received arms and ammunition from rightwing organisations as well as sections of the security forces and embarked upon paramilitary training projects in which IFP supporters were trained in weapons handling and paramilitary tactics. Just six days before the elections, when the IFP announced that it would contest the elections, political violence in the region came to an abrupt end. The Commission found that approximately 3 000 gross human rights violations were perpetrated by alleged Inkatha supporters/ and or members in KwaZulu and Natal from July 1993 to May 1994. This constituted more than 55 per cent of all violations reported to the Commission's Durban office for this period. Allowance must be made for the fact that many IFP supporters declared that they would not report violations perpetrated against the IFP and would not participate in the Commission's process.

Reference 1637 - 0.01% Coverage

1 8 2 The Commission has made a comprehensive finding concerning Operation Marion. It is contained in a lengthy document which includes the full reasons for the finding and which can be found in the State Archives. The Commission is mindful of the fact that senior members of the former SA Defence Force and Inkatha were acquitted in this lengthy trial on charges of murder and conspiracy to murder. In its findings, the Commission explains fully, in this volume as well as in volume 5 (Findings Volume), the basis upon which it found, on a balance of probabilities, that the SADF and Inkatha are nonetheless accountable for the human rights violations committed by Caprivi trainees. The main features of the finding are as follows:

Reference 1638 - 0.01% Coverage

1 8 6 Inkatha was found to be the foremost perpetrator of gross human rights violations in KwaZulu and Natal during the 1990s. Approximately 9 000 gross human rights violations were perpetrated by Inkatha in KwaZulu and Natal from 1990 to May 1994. This constituted almost 50 per cent of all violations reported to the Commission's Durban office for this period.

Reference 1639 - 0.01% Coverage

1 8 6 Statistical evidence, based on statements made to the Commission by witnesses, indicates that the foremost perpetrators of gross human rights violations (GHRVs) in KwaZulu and Natal for this period, were persons who were named by witnesses as being supporters and/ or members of the IFP. Approximately 9000 GHRVs were perpetrated by such persons in KZN and Natal from 1990 – 1994, which constituted 50% of all violations reported to the Commission's Durban office for this period, and over 33% of the total number of GHRVs reported for the 34 year period of the Commission's mandate. However, in the light of the fact that the vast majority of members and supporters of the IFP stayed away from the Commission, the Commission was denied the opportunity of recording the testimonies of the large numbers of IFP members and supporters who were victims of violence at the hands of supporters of

the ANC or its affiliates. Accordingly, any statistical data concerning the respective culpability of the IFP and the ANC during these years, must be seen and understood in the light of the above.

Reference 1640 - 0.01% Coverage

THE COMMISSION MADE A COMPREHENSIVE FINDING ON THE SEVEN DAY WAR AND ON THE ACCOUNTABILITY OF THE PRIMARY ROLE-PLAYERS IN A CONFLICT THAT RESULTED IN THE COMMISSION OF MANY HUNDREDS OF GROSS VIOLATIONS OF HUMAN RIGHTS. THE ROLE-PLAYERS INCLUDE: THE RIOT UNIT OF THE SAP, INCLUDING SPECIAL CONSTABLES, AND THE SOUTH AFRICAN DEFENCE FORCE.

Reference 1641 - 0.01% Coverage

THE COMMISSION FINDS THE KILLING OF PROMINENT TRADE UNIONISTS IN MPHOPHOMENI TOWNSHIP BY MEMBERS OF INKATHA AND THE KZP SET IN MOTION A LENGTHLY PERIOD OF POLITICAL CONFLICT RESULTING IN WIDESPREAD GROSS HUMAN RIGHTS VIOLATIONS FOR WHICH INKATHA AND THE KZP ARE HELD ACCOUNTABLE.

Reference 1642 - 0.01% Coverage

THE COMMISSION FINDS THE KILLING OF PROMINENT TRADE UNIONISTS IN MPHOPHOMENI TOWNSHIP BY MEMBERS OF INKATHA AND THE KZP SET IN MOTION A LENGTHLY PERIOD OF POLITICAL CONFLICT RESULTING IN WIDESPREAD GROSS HUMAN RIGHTS VIOLATIONS FOR WHICH ELEMENTS OF INKATHA AND THE KZP ARE HELD ACCOUNTABLE.

Reference 1643 - 0.01% Coverage

The Commission has made a comprehensive finding regarding the KZP, in which it is described, inter alia, as a highly politicised force, openly assisting the IFP – by omission and by active participation - in the commission of gross human rights violations, as well as being grossly incompetent.

Reference 1644 - 0.01% Coverage

In investigating the activity of the KZP, which was disbanded and integrated into the SAPS in 1994, the Commission did not have the benefit of eliciting the viewpoint of and evidence from the KZP, as most of its senior members did not volunteer evidence to the Commission. The Commission has made a comprehensive finding regarding the KZP, in which it is described, inter alia, as a highly politicised force, openly assisting the IFP – by omission and by active participation - in the commission of gross human rights violations, as well as being grossly incompetent.

Reference 1645 - 0.01% Coverage

THE COMMISSION FINDS THAT THE KILLING OF SIXTEEN PEOPLE ON 8 NOVEMBER 1990 WAS CAUSED BY UNKNOWN SUPPORTERS OF THE IFP FROM THE BRUNTVILLE HOSTEL, CONSTITUTING GROSS VIOLATIONS OF HUMAN RIGHTS, FOR WHICH UNKNOWN INKATHA - SUPPORTING HOSTELDWELLERS ARE HELD ACCOUNTABLE.

Reference 1646 - 0.01% Coverage

THE COMMISSION FINDS THAT THE KILLING OF SIXTEEN PEOPLE ON 8 NOVEMBER 1990 WAS CAUSED BY UNKNOWN SUPPORTERS OF THE IFP FROM THE BRUNTVILLE HOSTEL, CONSTITUTING GROSS VIOLATIONS OF HUMAN RIGHTS, FOR WHICH UNKNOWN INKATHA - SUPPORTING HOSTEL-DWELLERS ARE HELD ACCOUNTABLE. THE COMMISSION NOTES THAT SINCE THE IFP DECLINED TO PARTICIPATE IN HEARING THAT THERE MAY BE OTHER PERSPECTIVES WHICH IT DID NOT HAVE THE BENEFIT OF RECEIVING AND ANALYSING.

Reference 1647 - 0.01% Coverage

117 The above mentioned incidents represent iconic events over the past twelve years in which IFP officers, members and supporters were involved in acts of serious political violence. They do not purport to be a complete list of such incidents. However, the most devastating indictment of the role of the IFP in political violence during the Commission's mandate period is to be found in the statistics compiled by the Commission directly from submissions by victims of gross human rights violations. These established the IFP as the foremost perpetrator of gross human rights violations in KwaZulu and Natal during the 1990-94 period. Indeed, IFP violations constituted almost 50 per cent of all violations reported to the Commission's Durban office for this period, and over one-third of the total number of gross human rights violations committed during the thirty-four-year period of the Commission's mandate. The statistics also indicate that IFP members, supporters and officers in KwaZulu and Natal were responsible for more than 55 per cent of all violations reported to the Commission's Durban office for the period between July 1993 and May 1994.

Reference 1648 - 0.01% Coverage

119 It must be noted here that, for much of the period in which the Commission was able to accept human rights violations statements, the IFP discouraged its members and supporters from making submissions to the Commission. The result is that only about 10 per cent of all statements taken in KwaZulu-Natal came from people linked to the IFP. The significant point is that the statistics derived from the Commission's database do not diverge from those published by other national and international bodies. All of these are consistent in identifying the IFP as the primary non-state perpetrator of gross human rights abuse in South Africa from the latter 1980s through to 1994.

Reference 1649 - 0.01% Coverage

117 The above incidents represent iconic events over the past twelve years in which IFP officers, members and supporters were involved in acts of serious political violence. They do not purport to be a complete list of such incidents. However, the most devastating indictment of the role of members and/ or supporters of the IFP in political violence during the Commission's mandate period is to be found in the statistics compiled by the Commission directly from submissions by victims of gross human rights violations. These established that members and/ or supporters of the IFP were the foremost perpetrator of gross human rights violations in KwaZulu and Natal during the 1990-94 period. Indeed, such violations constituted almost 50 per cent of all violations reported to the Commission's Durban office for this period, and over one-third of the total number of gross human rights violations committed during the thirty-four-year period of the Commission's mandate. The statistics also indicate that IFP members, supporters and officers in KwaZulu and Natal were responsible for more than 55 per cent of all violations reported to the Commission's Durban office for the period between July 1993 and May 1994.

Reference 1650 - 0.01% Coverage

119 It must be noted here that, for much of the period in which the Commission was able to accept human rights violations statements, the IFP discouraged its members and supporters from making submissions to the Commission. The result is that only about 10 per cent of all statements taken in KwaZulu-Natal came from people linked to the IFP. The significant point is that the statistics derived from the Commission's database do not diverge from those published by other national and international bodies. All of these are consistent in identifying members and/ or supporters of the IFP as the primary non-state perpetrator of gross human rights abuse in South Africa from the latter 1980s through to 1994. The Commission notes that a complete picture of the IFP-ANC conflict could not be formed due to the failure of by many IFP members and supporters to participate in the Commission and the absence of many countervailing complaints of violations against the IFP.

Reference 1651 - 0.01% Coverage

DURING THE PERIOD 1982-94, THE INKATHA FREEDOM PARTY, KNOWN AS INKATHA PRIOR TO JULY 1990 (HEREINAFTER REFERRED TO AS "THE ORGANISATION") WAS RESPONSIBLE FOR GROSS VIOLATIONS OF HUMAN RIGHTS COMMITTED IN THE FORMER TRANSVAAL, NATAL AND KWA ZULU AGAINST • PERSONS WHO WERE PERCEIVED TO BE LEADERS, MEMBERS OR SUPPORTERS OF THE UDF, ANC, SOUTH AFRICAN COMMUNIST PARTY (SACP) AND COSATU ;

Reference 1652 - 0.01% Coverage

- CREATING A CLIMATE OF IMPUNITY BY EXPRESSLY OR IMPLICITLY CONDONING GROSS HUMAN RIGHTS VIOLATIONS AND OTHER UNLAWFUL ACTS COMMITTED BY MEMBERS OR SUPPORTERS OF THE ORGANISATION .
- CHIEF MGBUTHELEZI SERVED SIMULTANEOUSLY AS PRESIDENT OF THE IFP AND AS THE CHIEF MINISTER OF THE KWAZULU GOVERNMENT AND WAS THE ONLY SERVING MINISTER OF POLICE IN THE KWAZULU GOVERNMENT DURING THE ENTIRE THIRTEEN-YEAR EXISTENCE OF THE KWAZULU POLICE. WHERE THESE THREE AGENCIES ARE FOUND TO HAVE BEEN RESPONSIBLE FOR THE COMMISSION OF GROSS HUMAN RIGHTS, CHIEF MANGOSUTHU BUTHELEZI IS HELD BY THIS COMMISSION TO BE ACCOUNTABLE IN HIS REPRESENTATIVE CAPACITY AS THE LEADER, HEAD OR RESPONSIBLE MINISTER OF THE PARTIES CONCERNED.

Reference 1653 - 0.01% Coverage

121 The formal finding of the Commission on the actions by members, supporters or officials of the organisation, is set out below: DURING THE PERIOD 1982-94 MEMBERS, SUPPORTERS AND/ OR OFFICIALS OF THE INKATHA FREEDOM PARTY, KNOWN AS INKATHA PRIOR TO JULY 1990 (HEREINAFTER REFERRED TO AS "THE ORGANISATION") WERE RESPONSIBLE FOR GROSS VIOLATIONS OF HUMAN RIGHTS COMMITTED IN THE FORMER TRANSVAAL, NATAL AND KWAZULU AGAINST: • PERSONS WHO WERE PERCEIVED TO BE LEADERS, MEMBERS OR SUPPORTERS OF THE UDF, ANC, SOUTH AFRICAN COMMUNIST PARTY (SACP) AND COSATU ;

Reference 1654 - 0.01% Coverage

- C R E A T I N G A C L I M A T E O F I M P U N I T Y B Y E X P R E S S L Y O R I M P L I C I T L Y C O N D O N I N G G R O S S H U M A N R I G H T S V I O L A T I O N S A N D O T H E R U N L A W F U L A C T S C O M M I T T E D B Y M E M B E R S O R S U P P O R T E R S O F T H E O R G A N I S A T I O N .

CHIEF MG BUTHELEZI SERVED SIMULTANEOUSLY AS PRESIDENT OF THE IFP AND AS THE CHIEF MINISTER OF THE KWAZULU GOVERNMENT AND WAS THE ONLY SERVING MINISTER OF POLICE IN THE KWAZULU GOVERNMENT DURING THE ENTIRE THIRTEEN-YEAR EXISTENCE OF THE KWAZULU POLICE. WHERE THESE THREE AGENCIES ARE FOUND TO HAVE BEEN RESPONSIBLE FOR THE COMMISSION OF GROSS HUMAN RIGHTS, CHIEF MANGOSUTHU BUTHELEZI IS HELD BY THIS COMMISSION TO BE ACCOUNTABLE IN HIS REPRESENTATIVE CAPACITY AS THE LEADER, HEAD OR RESPONSIBLE MINISTER OF THE PARTIES CONCERNED.

Reference 1655 - 0.01% Coverage

- The findings implicating the IFP and Prince Buthelezi in gross human rights violations, criminality and conspiracy are without any factual basis.

Reference 1656 - 0.01% Coverage

The TRC made a number of findings relating to black-on-black conflict. In this regard the figures of casualties suggested by the TRC are unsubstantiated and have been extrapolated through statistics based on an undisclosed and obviously erroneous methodology. Contrary to what is stated in the TRC's report, almost 400 Inkatha leaders were killed in a systematic plan of targeted mass assassination. More than 10,000 Inkatha members and supporters were killed and hundreds of thousands of them were dispossessed or suffered untold misery and gross human rights violations because of the armed struggle waged against Inkatha.

The TRC made certain findings relating to the KZP which suggested that on occasions they co-operated with the SAP in perpetrating gross human rights violations. These findings ignored certain relevant facts and are wrong. As the ruling party of KwaZulu, Inkatha had the responsibility of maintaining law and order. The TRC ignored the reality that Prince Buthelezi had no operational control over the KZP which, in terms of law, was under the control of the South African Government in respect of all matters relating to its deployment, training, promotion and operational control. Nothing in the TRC Report or in any credible evidence before the TRC detracts from the fact that Prince Buthelezi never ordered, authorized, approved, condoned or ratified any gross human rights violations.

Reference 1657 - 0.01% Coverage

The TRC has tried to make the findings against the IFP mirror the findings made against the South African Government and the ANC. Through the chain of command within the armed struggle the ANC had control of and was responsible for the violence and gross human rights violations committed by its members and supporters, who were acting in accordance with ANC stated policies. The same applies in respect of the covert operations of the South African Government and the illegal activities of the SAP and the SADF, which were conducted within the parameters of an existing structure accountable to certain leaders. In the IFP there was no chain of command or integrated structure which can in any way link community and individual violence to Inkatha or its Leader. In making its findings the TRC had ignored the absence of any causal link and has incorrectly adopted an extended notion of accountability. Prince Buthelezi served simultaneously as President of the IFP and the Chief minister of the KwaZulu government and during the period 1982-1994 was the Minister of Police in the KwaZulu Government. The TRC sought to hold Prince Buthelezi politically accountable for the commission of gross human rights

violations allegedly perpetrated by the entities by virtue of the positions which he held. As appears from this appendix prince Buthelezi does not accept that he can be held accountable, politically or otherwise, in his representative capacity for the commission of any gross human rights violations.

Reference 1658 - 0.01% Coverage

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.

Reference 1659 - 0.01% Coverage

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

Reference 1660 - 0.01% Coverage

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.

Reference 1661 - 0.01% Coverage

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.

Reference 1662 - 0.01% Coverage

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.

Reference 1663 - 0.01% Coverage

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

Reference 1664 - 0.01% Coverage

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.

Reference 1665 - 0.01% Coverage

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.

Reference 1666 - 0.01% Coverage

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.

Reference 1667 - 0.01% Coverage

[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.

Reference 1668 - 0.01% Coverage

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.

Reference 1669 - 0.01% Coverage

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.

Reference 1670 - 0.01% Coverage

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.

Reference 1671 - 0.01% Coverage

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.

Reference 1672 - 0.01% Coverage

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.

Reference 1673 - 0.01% Coverage

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.

Reference 1674 - 0.01% Coverage

2. The Commission noted that an important aspect of the insurrection was the clandestine collusion between right-wing forces, members of the security forces and the Inkatha Freedom Party (IFP). This led

to the commission of gross human rights violations and the training of IFP paramilitary forces in the hope of preventing the ANC from coming to power.

Reference 1675 - 0.01% Coverage

5. The Commission stated in its Final Report: In the late 1980's and early 1990's, a number of Afrikaner right-wing groups became active in the political arena. They operated in a loose coalition intent on securing the political interests of conservative Afrikaners through a range of activities seemingly intent on disrupting the negotiations process then underway. Operating both within and outside the negotiations process, members of these groups undertook actions which constituted gross violations of human rights.

Reference 1676 - 0.01% Coverage

The Commission finds that the Afrikaner Volksfront and structures operating under its broad umbrella were responsible, between April 1993 and May 1994, for gross violations of human rights of persons perceived to be supporters and leaders of the ANC, SACP, UDF, PAC, National party and other groups perceived not to support the concept of Afrikaner self-determination or the establishment of a volkstaat, to that end, the movement's political leaders and military generals advocated the use of violence in pursuit of the movement's aims and/or in an attempt to mobilise for an insurrection.

Reference 1677 - 0.01% Coverage

20. The evidence that emerged from the amnesty applications and hearings confirms the original findings made by the Commission in respect of right-wing groups. The testimonies of the applicants were tantamount to confessions that the right wing embarked on a campaign of terror and violence designed to destabilise the country at an extremely sensitive time. Right-wing groups were responsible for committing gross human rights violations as defined by international human rights law. In most instances, the victims were innocent civilians whose only 'sin' was the fact that they were black. The motive for these violations was that members of the various right-wing groups were opposed to majority rule and to a change in their way of life. There was no nobility or morality to their cause, despite their attempts to justify their actions.

Reference 1678 - 0.01% Coverage

8. The Commission recommends and urges that government and civil society adopt the national programme of action proposed by the South African Human Rights Commission, and work towards a society free of racism, xenophobia and related intolerance.

Reference 1679 - 0.01% Coverage

12. The Commission recommends and urges that the curriculum of the South African Human Rights Commission National Education Centre include projects that aim to encourage children to keep the past alive.

Reference 1680 - 0.01% Coverage

APOLOGY BY HEAD OF STATE ON BEHALF OF PERPETRATORS OF GROSS VIOLATIONS OF HUMAN RIGHTS

16. The Commission recommends and urges that, as head of state, the President of the Republic of South Africa apologises to all victims on behalf of those members of the security forces of the former state and those armed forces of the liberation movements who committed gross violations of human rights.

Reference 1681 - 0.01% Coverage

17. The Commission created and maintained a database to manage the data requirements of the three Committees. The database was used to register human rights violations statements and amnesty applications as they were lodged with the Commission, after which teams of data processors stored the names of the victims, the violations they suffered and details of the alleged perpetrators. During the life of the Commission, the database was upgraded to assist with the management of the work of the Reparations and Rehabilitation Committee. It is still being used by the staff of the President's Fund today to record disbursements made.

18. By the time the Commission closed, the database had become a rich repository of information about the nature, scale, location, dates, types and consequences of violations of human rights suffered by South Africans. As such, it is an essential primary source of valuable historical material, which must be made accessible to future generations.

Reference 1682 - 0.01% Coverage

20. The work of the Amnesty Committee continued after that of the Human Rights Violations (HRV) Committee had been completed, so a process of data reconciliation is necessary to compare and contrast the victims and violations described in

Reference 1683 - 0.01% Coverage

human rights violations. 'Witchcraft' and 'tradition and culture' were major factors cited in a number of cases as being the motivation for the commission of gross human rights violations.

Reference 1684 - 0.01% Coverage

28. The Commission recommends therefore that the authorities note this problem as a matter of urgency, and embark on an education program and take action to stop practices related to witchcraft that lead to the commission of gross human rights violations.

Reference 1685 - 0.01% Coverage

33. The Commission is thus of the view that any amnesty and pardon must make provision for the rights of victims and maintain the constitutionality of our new state based on disclosure and a respect for the human rights of all.

Reference 1686 - 0.01% Coverage

1. The activities of the Truth and Reconciliation Commission (the Commission) were suspended on 28 October 1998. Notwithstanding this suspension, the Amnesty Committee had to continue with its functions until a date determined by proclamation by the President. In addition, the Amnesty Committee was required to take over certain duties and functions of the other two statutory Committees, namely the Committee on Human Rights Violations (HRVC) and the Committee on Reparation and Rehabilitation

(RRC). These duties were related to matters that had not been finalised before 31 July 1998, excluding enquiries and hearings and matters emanating from the amnesty process. To assist the Amnesty Committee in this regard, the President appointed two existing Commissioners to that Committee.

Reference 1687 - 0.01% Coverage

3. The responsibility conferred by the amendment was far from simple. Indeed, the forty months that followed the suspension of the Commission were in many ways as challenging and in certain instances even more difficult and strenuous than the thirty-two months prior to the suspension. The Amnesty Committee became the administrative and operational centre of the Commission but was, at the same time, faced with drastic cuts in funding and human resources. It was also under continuous pressure to finalise the outstanding work in the shortest possible time, while at the same time being expected to deliver a product that would serve as a solution to national problems, especially with regard to the victims of gross human rights violations. Statistics show that more correspondence, telephonic enquiries and personal interviews with or in connection with victims were attended to after 1998 than before.

Reference 1688 - 0.01% Coverage

providing the machinery for those persons who sought to receive amnesty for committing human rights violations.

Reference 1689 - 0.01% Coverage

providing the proverbial 'shoulder to cry on' and serving as a 'punching bag' for those deprived and frustrated victims of gross human rights violations as a result of government non-delivery of reparation and rehabilitation.

Reference 1690 - 0.01% Coverage

- providing reparation for and complete assessments of approximately 21 000 victims of gross human rights violations by the single remaining Commissioner of the RRC;

Reference 1691 - 0.01% Coverage

- attempting to establish the whereabouts or correct addresses of almost 3000 victims of gross human rights violations;

Reference 1692 - 0.01% Coverage

13. The most difficult aspect to deal with was the granting of amnesty. Everything related to the concept was controversial even before the Act was promulgated or the Amnesty Committee established. Giving the Amnesty Committee the power to grant amnesty meant that a visible body was established that could now be blamed for setting perpetrators free. Throughout its existence, the Commission and its entire staff had to cope and deal with this negative sentiment. The work of the Amnesty Committee also seemed to contradict that of the other Committees of the Commission. The HRVC devoted its time and energy to acknowledging the painful experiences of victims of gross violations of human rights and to identifying those who had perpetrated these gross human rights violations. The Amnesty Committee, on the other hand, set many of these perpetrators of gross human rights violations free from prosecution

and from prison on the grounds that they had acted with a political objective and had made full disclosure. In addition, in giving effect to the provisions of the Act, the Amnesty Committee had powers of implementation, whilst the RRC could only make recommendations. Some perpetrators were granted immediate freedom. Victims, however, were required to wait until parliament had accepted or rejected the recommendations of the Commission.

Reference 1693 - 0.01% Coverage

16. The Amnesty Committee tried its utmost to be as objective as humanly possible. Listening to evidence of horrendous acts of gross violations of human rights and to evidence of immense human suffering and inhumane treatment over a period of more than five years certainly did not make it easy. Notwithstanding this, the Amnesty Committee was always aware of the fact that it had to apply the provisions of the Act and that it had a role to play in unearthing the truth. It made it its responsibility to do exactly that. The Amnesty Committee was also very aware of the plight of victims, and everything possible was done to ease their suffering and to give them the recognition they deserved.

Reference 1694 - 0.01% Coverage

34. Acknowledgement is also given to those persons who, for the sake of national unity and reconciliation, and despite humiliation and embarrassment, came forward and were sincere in admitting to horrendous acts of human rights violations.

Reference 1695 - 0.01% Coverage

b original human rights violations (HRV) statements and Investigative Unit working files;

Reference 1696 - 0.01% Coverage

15. The database linked the findings of the Human Rights Violations Committee (HRVC) with the decisions from the Amnesty Committee to provide lists of victims to the Reparation and Rehabilitation Committee (RRC). The names and addresses of eligible victims were printed from the database for sending application forms for reparation.

Reference 1697 - 0.01% Coverage

Date of Appointment: 18 December 1997 The Human Rights Violations Committee

Reference 1698 - 0.01% Coverage

1.2 The objectives of the Commission are to promote national unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past by establishing a complete picture of the causes, nature and extent of gross violations of human rights by conducting investigations and holding hearings; facilitating the granting of amnesty to persons who make full disclosure of all the relevant facts relating to these acts; establishing and making known the fate or whereabouts of victims and recommending reparations in respect of them; and compiling a report providing a comprehensive account of the activities and findings of the Commission.

Reference 1699 - 0.01% Coverage

The Truth and Reconciliation Commission was constituted in terms of The Promotion of National Unity and Reconciliation Act 34 of 1995 on 15 December 1995. The extent of the work of the Commission could not be foreseen by the legislature and was influenced as a result of the extension granted by the President of the cut-off date of gross violations of human rights from 5 December 1993 to 10 May 1994. The closing date to submit amnesty applications was also extended from 11 May 1997 to 30 September 1997 which greatly influenced the work of the Commission.

Reference 1700 - 0.01% Coverage

The Committee on Human Rights Violations and the Committee on Reparation and Rehabilitation have more or less completed their work on 31 July 1998. However the assessment of reparation and rehabilitation forms as well as the possible appeals and/or challenges of human rights violations work continued in 1999. The work of the Amnesty Committee will however continue into 2000.

Reference 1701 - 0.01% Coverage

1.2 The objectives of the Commission are to promote national unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past by establishing a complete picture of the causes, nature and extent of gross violations of human rights by conducting investigations and holding hearings; facilitating the granting of amnesty to persons who make full disclosure of all the relevant facts relating to these acts; establishing and making known the fate or whereabouts of victims and recommending reparation measures in respect of them; and compiling a report providing a comprehensive account of the activities and findings of the Commission.

Reference 1702 - 0.01% Coverage

The Truth and Reconciliation Commission was constituted in terms of The Promotion of National Unity and Reconciliation Act 34 of 1995 on 15 December 1995. The TRC was established to investigate the nature, causes and extent of gross violations of human rights during the period 1960 to 1994. To achieve this, Act 34 of 1995 required the establishment of the following committees:
(a) The Committee on Human Rights Violations (HRV Committee), to investigate gross human rights violations, which, inter alia, afforded victims an opportunity to relate their suffering;

Reference 1703 - 0.01% Coverage

While it is important that the TRC does not delay its own closure, it is equally important to deliver a completed product which will not place in jeopardy the work already done or lay a basis for potential legal challenges. Further, all those who have participated in the project or observed its progress recognise that the work of the TRC has assisted in laying the foundations for a culture of human rights in our country. The perceived failure of the TRC to complete its historic task would compromise such a view.

Reference 1704 - 0.01% Coverage

1.2 The objectives of the Commission are to promote national unity and reconciliation in a spirit of understanding which transcends the conflicts and divisions of the past by establishing a complete picture of the causes, nature and extent of gross violations of human rights by conducting investigations and holding hearings; facilitating the granting of amnesty to persons who make full disclosure of all the

relevant facts relating to these acts; establishing and making known the fate or whereabouts of victims and recommending reparation measures in respect of them; and compiling a report providing a comprehensive account of the activities and findings of the Commission.

Reference 1705 - 0.01% Coverage

Human Rights Commission Human rights violations
Committee on Human Rights Violations (or Human Rights Violations Committee) I n t e r-American
Commission on Human Rights

Reference 1706 - 0.01% Coverage

United Nations High Commission on Human Rights University of South Africa University of Transkei

Reference 1707 - 0.01% Coverage

The Commission received statements from 21290 (twenty one thousand two hundred and ninety people, of whom more than 19 050 (Nineteen thousand and fifty) were found to be victims of a gross violation of human rights. In addition, more than 2975 victims emerged from the amnesty process. It is re g retted that in a number of cases, applicants were found not to have been a victim. This does not mean that their stories a re untrue or that they did not endure suffering. Rather in these cases the Commission was unable to make a finding because so little corroborative information was available. In a small number of cases, victims' statements were turned down because the matter fell outside the mandate period, or because the matter could not be proved to be politically motivated.

Reference 1708 - 0.01% Coverage

This volume re c o rds the names of those who have been found to be victims of gro s s human rights violations and a brief summary of each victim's story. We acknowledge that the brevity of each story in no way provides a complete picture of the pain and s u ffering of the many thousands of victims who came forward .

The names listed in this volume are those victims of gross human rights violations who e m e rged through statements made to the Human Rights Violations Committee (HRV C) and in applications for amnesty before the Amnesty Committee (AC). The list is not intended to be exhaustive of all those who may be defined as victims of Apartheid.

Reference 1709 - 0.01% Coverage

Each summary contains a brief description of violations reported to the Commission and found to be gross human rights violations, according to the categories defined in the Act, i.e. killing, torture, abduction and severe ill treatment. As far as possible, the summaries re c o rd a brief sketch of the political context in which a violation took place. The summary contains, in essence, the outcome of investigations and re f l e c t s the 'finding' of the Commission on each case. Certain summaries may contain other information for the sake of completeness and context.

While a person may have reported many violations, the summaries tend to confine themselves to the violations that could be corroborated by the Commission. The Commission may have accepted certain aspects of the statement as gross human rights violations and rejected others, because of a lack of corroboration, inadequate information, absence of political context and so on. This may be confusing for

victims whose summaries are included here as aspects of their experience may be excluded. However, since the Commission took the route of corroborating statements, it was deemed appropriate to only include corroborated violations in these summaries.

Reference 1710 - 0.01% Coverage

Some victim groupings are poorly represented in the summaries. For example, military operatives of the liberation movements generally did not report violations they experienced to the Commission, although many who were arrested experienced severe torture. This is in all likelihood a result of their reluctance to be seen as 'victims' as opposed to combatants fighting for a moral cause for which they were prepared to suffer such violations. The same can be said for most prominent political activists and leadership figures. The overwhelming majority of cases here come from ordinary South Africans who were either mobilised into political action or caught up in an environment in which they became victims of gross human rights violations.

Reference 1711 - 0.01% Coverage

periods of detention without trial in the period from 1960 to 1994. A small fraction of these appear here. Furthermore, prisoners who spent years, even decades, on Robben Island prison or in other such prisons for political offences are also poorly represented in the summaries. The Commission did not, for example, receive a single Human Rights Violation statement from any of the Rivonia trialists. These summaries cannot do justice to the magnitude of the violations experienced by victims. They do not always convey a sense of the lasting impact of the violations, nor do they describe the wider picture of abuse, discrimination and human rights violations that Apartheid wreaked primarily upon the black citizens of the country.

Reference 1712 - 0.01% Coverage

An entry for Pringle does not convey much more than how the shooting made him a victim of a gross violation of human rights.

Reference 1713 - 0.01% Coverage

■ Unknown victims Many unnamed and unknown South Africans were the victims of gross violations of human rights during the Commission's mandate period. Their stories came to the Commission in the stories of other victims and in the accounts of perpetrators of violations.

Reference 1714 - 0.01% Coverage

The unknown victims of human rights violations in South Africa were not necessarily aligned to any particular political organisation or party. Neither were they confined to a particular province or region in the country. Men and women, young and old alike fell victim to the violence and suffering spawned by Apartheid.

Reference 1715 - 0.01% Coverage

29 August 1985, in the widespread protest and police shootings that followed the POLLSMORMAR CH held the previous day. CURIEL, Henry (60), an ANC member, was shot dead in front of his flat by

suspected members of the Delta Group in May 1978 in Paris, France. At the time, he was training and managing ANC exiles. CURREN, Brian, a human rights lawyer, had his life threatened in a pamphlet manufactured by the Security Branch and purporting to be issued by the Wit Wo l w e, a right-wing group. One Nort h e rn Transvaal Security Branch operative was granted amnesty for this operation (AC/2001/027). C U T S H WA, Welesia Puleng (25), an IFP support e r, died after she was axed and then set alight by a named ANC support e r, in Boipatong, Va n d e r b i j l p a r k, TvI, on 12 June 1992. C WAILE, Boingotlo Moses, was beaten by members of the Bophuthatswana Police in Taung, Bophuthatswana, while participating in a march on 13 March 1992. CWELE, Aubrey Mduduzi (6), was severely traumatized during an armed attack by IFP supporters on his family home in Umlazi, Durban, on 28 November 1992. Thre e members of his family were shot dead in the attack. CWELE, Herbert Dingaen, an ANC support e r, was shot dead by IFP supporters at Umlazi, Durban, on 28 November 1992, in ongoing political conflict in the are a . CWELE, Mirriam Thenjiwe, an ANC support e r, was shot dead by IFP supporters at Umlazi, Durban, on 28 November 1992, in ongoing political conflict in the are a . CWELE, Mzawuqalwa Elliot, an ANC support e r, was shot and severely injured by IFP supporters, at Umlazi, Durban, on 28 November 1992, in ongoing political conflict in the are a . CWELE, Nonkululeko Michelle, was shot and s e v e rely injured by IFP supporters at Umlazi, Durban, on 28 November 1992, in ongoing political conflict in the are a . CWELE, Ntombazanyana Annie, an ANC support e r, was shot dead by IFP supporters at Umlazi, Durban, on 28 November 1992, in ongoing political conflict in the are a . CWELE, Ntombikhona (22), ANC support e r, had her house partly burnt down by IFP supporters at Umlazi, Durban, on 28 November 1992, in ongoing political conflict in the are a . C Y R N O W, M, was injured in what became known as the MA G O O'S BA RB O M B I N G in Durban on 14 June 1986. The explosion killed three women and injured at least 74 other people. Seven MK operatives were granted amnesty (AC/2001/128). CYSTER, Belinda (20), a UDF support e r, was detained on 15 June 1986 while attending a church service in Elsies River, Cape Town. The entire congregation of 189 people was detained. Ms Cyster was interro g a t e d and held under emergency regulations for three weeks. D ' ATH, Georg e, a photographer and journalist, was hacked and stabbed to death by WI T D O E K E vigilantes in Nyanga, Cape Town, on 10 June 1986, during the mass destruction of UDF-supporting squatter camps

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MAKI, Thandeka Yvonne (30), was shot by named members of the SAP in Dukathole, Aliwal North, Cape, on 26 June 1986, when police randomly opened fire at people protesting for the release of Mandela and the restoration of human rights. MAKI, Thembeke Nocawe (17), an ANC support e r, was shot by members of the MU N I C I P A L P O L I C E on 21 September 1989 in New Dorrington, Fort Beaufort , C a p e . M A K I B I N YANE, Sello Andries (22), a COSAS member, was shot dead in a D R I V E-B Y S H O O T I N G in Sharpeville, Ve reeniging, TvI, on 15 April 1993. Between January and October 1993, 193 people were killed in such shootings. MAKINANA, Fukuta, was stabbed to death during politicised tribal conflict in Cofimvaba, Transkei, during 1993. Conflict erupted after Chief KD Matanzima o r d e red the forcible removal of communities in Keilands, Transkei, to Boomplaas. MAKINANA, Pesika Vrey (34), an ANC support e r, was stabbed by IFP supporters in Hlobane, near Vryheid, Natal, in August 1990. MAKINANA, William (38), an ANC support e r, was shot dead by members of the SAP, some of whom are named, during political conflict in Middelburg, Cape, on 2 July 1993. MAKITLA, Chelane Wilson (26), was arrested by KwaNdebele Police in Dennilton, KwaNdebele, in September 1986 during resistance to I N C O R P O R AT I O N into KwaNdebele. MAKITLA, David (34), an ANC support e r, was shot and injured at Moutse, KwaNdebele, in 1985 during conflict over I N C O R P O R AT I O N into KwaNdebele. MAKITLA, Morare Christopher (12), was severe l y beaten by members of the KwaNdebele Police at Ntoane village, KwaNdebele, in June 1986 during conflict over I N C O R P O R AT I O N into KwaNdebele. Security f o rces were allegedly searching for his relatives and assaulted family members and villagers when they failed

to find them. MAKITLA, Ntshengwane Morgan (36), a UDF supporter, was severely assaulted by members of the SAP in Dennilton, KwaNdebele, in January 1987. Mr Makitla was taken to the Philadelphia police station and ordered to write down the names of his 'comrades'. He refused and was beaten more. After eight days he woke up in the Philadelphia hospital. He was later charged and freed on R800 bail. When inquiring he was told that the court case was over but his bail was never returned. MAKITLA, Philemon Nkhulang, was arrested by two members of the KwaNdebele Police on 6 September 1987 and detained for 221 days in Moutse, KwaNdebele, during conflict between the KwaNdebele Police and residents over INCORPORATION into KwaNdebele. MAKITLA, Philimon (21), was shot dead by members of the SADF and IMBOKODONG group in Dennilton, KwaNdebele, on 1 January 1986 while attending a meeting at the Royal Kraal to discuss the abduction of some villagers by the Defence Force. Soon after the

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MLANGA, Thozamile, was shot dead by named members of the SAP on 23 July 1985 at Phakamisa High School in Zwile, Port Elizabeth. Scholars were involved in a student protest when police randomly shot at students, killing two and injuring six others, including teachers. The perpetrators were found guilty of murder and attempted murder and were sentenced to ten years' imprisonment but did not serve their sentence. MLANGENI, Agatha (57), survived an attempted killing when the house in which she and her family were sleeping was burnt down at Inanda, near KwaMashu, Durban, on 10 September 1989 in intensifying conflict between UDF and Inkatha supporters in the area. The family was suspected of harbouring Inkatha supporters. MLANGENI, Bhekizizwe Godfrey (39), an ANC member and human rights lawyer, was killed by a bomb at his home in Jabulani, Soweto, Johannesburg, on 15 February 1991. The bomb, concealed in headphones, was detonated when he activated a tape recorder. The intended target was Mr Dirk Coetzee, a former Vlakplaas commander, who had exposed the activities of Vlakplaas and was a client of Mr Mlangeni. Nine Security Branch operatives from Vlakplaas and Security Branch Headquarters were granted amnesty (AC/2001/167). MLANGENI, Catherine Mamosali (54), an ANC supporter, was intimidated, harassed, beaten and tortured by members of the SAP in Jabulani, Soweto, Johannesburg, in 1986 after detention of her student leader son during the state of emergency. Mr Mlangeni was later killed by a parcel bomb manufactured by a Vlakplaas member in 1991. The bomb was meant to kill former Vlakplaas commander Dirk Coetzee. The perpetrators of this act have applied for amnesty. MLANGENI, Elias, a self-defence unit (SDU) member, was shot dead in a DRIVE-BYSHOOTING in Evaton, Tvl, on 15 June 1992, the eve of the anniversary of the SOWETOUPRISING. Three SDU members were killed in the same attack which was the forerunner of a spate of similar shootings in the Transvaal. MLANGENI, John (20), a member of COSAS, was severely injured when a booby-trapped hand-grenade exploded in his hands on 25/26 June 1985. See OPERATIONAL ZERO ZERO. Fifteen Security Branch operatives, including the head of the Security Branch and other senior personnel, were granted amnesty for the operation (AC/2001/058). MLANGENI, John Pipana (39), an ANC supporter, was shot dead by IFP supporters at Greytown, Natal, on 6 November 1990. MLANGENI, Khobonina Maria, was killed during the BOIPATONG MASSACRE by IFP supporters in Boipatong, near Vanderbijlpark, Tvl, on 17 June 1992, which left 45 people dead and 27 seriously injured. Thirteen perpetrators were granted amnesty; a further three applications were refused (AC/2000/209). MLANGENI, Madlenkosi Simon (29), an IFP supporter, was shot and stabbed to death by fellow IFP supporters at Estcourt, Natal, on 17 October 1993, when he failed to attend an IFP rally because of commitments.

Reference 1718 - 0.01% Coverage

s u p p o r t e r, had her house at Mpumalanga, KwaZulu, near Durban, burnt down by ANC supporters in J a n u a r y 1991. MNGWENGWE, Dennis Fanabonke, a UDF s u p p o r t e r, was shot and injured when a group of Inkatha supporters and Caprivi trainees attacked a UDF meeting in a house at Mpumalanga, KwaZulu, near Durban, on 18 January 1988. Nine people were killed and an estimated 200 people were injured in the attack. The group went on to destroy around eight houses. One former Inkatha member was granted amnesty (AC/1999/0332). MNGWENGWE, Diniwe Mpempe (29), had her house at Njobokazi, Mpumalanga, KwaZulu, near Durban, burnt down in growing political conflict in the a r e a during of 1981. MNGWENGWE, Mhlakiseni (32), was shot dead at Njobokazi, Mpumalanga, KwaZulu, near Durban, on 27 September 1981 in growing political conflict in the a r e a. MNGWENGWE, Mpandlana (48), an ANC support e r, had her house burnt down by IFP supporters in Richmond, Natal, in March 1991. MNGWENGWE, Nkosenye (26), an ANC support e r, was shot dead by IFP supporters in Richmond, Natal, on 23 Febr u a r y 1991. MNGWENGWE, Silvester (64), an IFP support e r, had his house at Richmond, Natal, destroyed in an arson attack by ANC supporters on 25 December 1990. MNGWENGWE, Zwelebi Felokwakhe (58), an Inkatha s u p p o r t e r, was killed at Njobokazi, Mpumalanga, KwaZulu, near Durban, in an attack by alleged UDF s u p p o r t e r s on 18 March 1990. See N J O B O K A Z I A T T A C K. MNGWEVU, Goden Ayanda (21), an ANC support e r, was shot and injured by named member of the SAP during a stayaway at Jansenville, Cape, on 23 June 1990. MNGWEVU, Sizwe Alfred (19), a UDF support e r, was t o r t u r e d by members of the SAP at Klipplaat police station, Cape, in 1983, after his arrest on suspicion of arson. He was released without being charg e d. MNGXUMA, Nobendiba (46), a UDF support e r, was s e v e r e l y beaten by members of the SAP in October 1976 in Port Elizabeth. Police were allegedly looking for her son. MNGXUNYENI, Sandile (16), a COSAS member, was detained and beaten in Wo r c e s t e r, Cape, in 1985, during student boycotts. MNIKA, Sandile Geof f r e y (23), a UDF support e r, was shot and injured by SADF members in Lamontville, Durban, on 25 August 1985 at a time of intense political conflict following the killing of Umlazi human rights lawyer Victoria Mxenge on 1 August.

Reference 1719 - 0.01% Coverage

M N YANDU, Dumisani Felton (32), was shot and i n j u r e d on 14 August 1985 by members of the SADF in Umlazi, Durban. Soldiers allegedly opened fire when people took to the streets to protest the killing of Victoria Mxenge, a human rights lawyer. M N YANDU, Elizabeth Sizakele (43), lost her house in an arson attack in Bhambayi, near KwaMashu, Durban, in ongoing political conflict between the ' R E D ' A N D ' G R E E N ' F A C T I O N S during 1993. M N YANDU, Fanile Lennox (21), an ANC support e r and an employee of a private company, was killed by IFP supporters while distributing IEC pamphlets in ND W E D W E, KwaZulu, near Durban, on 12 April 1994. Seven colleagues were killed with him. One IFP member was convicted for the attack. See ND W E D W E E L E C T I O N A T T A C K. M N YANDU, Fikakubuswa (5), was run over and killed by a vehicle on Umlazi Road, Durban, on 19 September 1991 during a period of intense political conflict between IFP and ANC supporters in the a r e a. The perpetrators had allegedly burnt down the family home two days earlier. M N YANDU, Fikile D (34), an ANC support e r, had her house burnt down by IFP supporters in Sonkombo, Ndwedwe, KwaZulu, near Durban, on 16 March 1994. See SO N K O M B O A R S O N A T T A C K S. M N YANDU, Gloria Zondeleni (42), was severe l y beaten by named perpetrators who also attacked and b u r n t down her home in ND W E D W E, KwaZulu, near Durban, on 14 December 1990 in intense conflict between IFP and ANC supporters in the area. Her husband and son were shot in the attack. M N YANDU, Herbert Lanagaletu, was one of eight people shot dead by ANC supporters in ongoing political conflict at Mpusheni Reserve, Natal, on 18 August 1992. One ANC supporter was granted amnesty (A C / 1 9 9 9 / 0 2 1 9). M N YANDU, Her m a n, was shot by named perpetrators who also attacked and burnt down his house in ND W E D W E, KwaZulu, near Durban, on 14 December 1990 in intense conflict between ANC and IFP s u p p o r t e r s in the a r e a. M N YANDU, Johannes (64), was stabbed to death by unidentified perpetrators at the Nancefield station,

Soweto, Johannesburg, on 8 May 1992. See TRAIN VIOLENCE. M N YANDU, Lungi (11), was sexually assaulted by named ANC supporters in Esigisini, KwaZulu, near Empangeni, Natal, on 17 May 1992. The perpetrators accused her family of belonging to the IFP. M N YANDU, Madoda (26), was shot dead in Umlazi, Durban, on 3 September 1991 in intense political conflict between IFP and ANC supporters. He was allegedly killed because his family lived between IFP and ANC zones, and both sides demanded their affiliation. M N YANDU, Mphikiswa John (51), an ANC supporter, was shot dead by IFP supporters in Umbumbulu, KwaZulu, near Durban, on 12 April 1993. M N YANDU, Mpumelele (21), was severely beaten by named perpetrators who also attacked and burnt

Reference 1720 - 0.01% Coverage

MTHEMBU, Zinhle Norris (15), was injured in an attack on her home in KwaDweshula, Port Shepstone, Natal, by ANC supporters on 2 August 1989. The perpetrators demanded to see her brother, an IFP supporter. When told he was out, they set fire to the home. MTHEMBU, Zuziwe, was shot and severely injured when a named Inkatha Youth Brigade member attacked her home in Clermont, near Durban, on 22 February 1988 during political conflict in the area. MTHENJANE, Clement Manala (28), was shot dead by IFP supporters on 24 May 1991 in Pimville, Soweto, Johannesburg, during ongoing clashes between IFP supporting hostel-dwellers and ANC supporters. MTHETHO, Mavalini, an ANC supporter, was severely beaten by members of the security forces in 1960 in Bizana, Transkei, during the PONDOLAND REVOLT. MTHETHO, Monaza Norah (45), had her house burnt down in Ezakheni, KwaZulu, near Ladysmith, Natal, on 13 July 1993 in continuing political conflict between ANC and IFP supporters. Earlier that day, ANC supporters had allegedly come to fetch her husband for a self-defence training nightcamp. He was later found burnt to death. MTHETHO, Nomadlangathi, an ANC supporter, was severely beaten by members of the security forces in 1960 in Bizana, Transkei, during the PONDOLAND REVOLT. MTHETHO, Wibusy, was shot and stabbed to death by IFP supporters at a squatter camp in Germiston, Tvl, on 14 December 1990. Hostel-dwellers were allegedly coerced into IFP membership when it launched itself as a political party in 1990. As a result, conflict between township residents and hostel-dwellers increasingly overlapped political affiliation with ethnic identity. MTHETHWA, Aaron Mxosheni (42), an IFP chairman, was shot dead by ANC supporters in Sokhulu, KwaZulu, near Empangeni, Natal, on 22 August 1992. IFP leader Chief Mangosuthu Buthelezi had addressed an IFP rally in the area that day. MTHETHWA, Adeline Sibong (51), an IFP supporter, had her 12 rondawels burnt down by other IFP supporters in KwaKhoza, KwaZulu, near Eshowe, Natal, on 17 November 1993. The perpetrators were allegedly targeting her sons, whom they believed to be ANC supporters. MTHETHWA, Agnes Nene (62), an ANC supporter, had her house petrol-bombed and burnt down by Inkatha supporters in Umlazi, Durban, on 14 August 1986. The attack was allegedly targeted at her son-in-law, a human rights lawyer and ANC supporter, who was shot and severely injured in the attack. MTHETHWA, Amos (49), was shot and stabbed to death by IFP supporters in Mashana, KwaZulu, near Empangeni, Natal, on 18 July 1992. His sons were ANC supporters. MTHETHWA, Babane Derrick (37), had his house in Engonyameni, near Umlazi, Durban, burnt down by a named Inkatha supporter on 10 June 1990 in political conflict between ANC and Inkatha supporters. MTHETHWA, Beshwara (50), an IFP supporter, was shot dead in Mabuyeni, KwaZulu, near Empangeni,

Reference 1721 - 0.01% Coverage

an ANC CAMP in Angola. One senior camp officer was granted amnesty for his contribution to Mr Pharatsi's death (AC/2000/149). PHAROE, Morapedi (23), was shot and injured by security guards while playing soccer at the Somhlolo grounds in Katlehong, Tvl, on 17 March 1993. Two others were shot and injured in the same incident which occurred during heightened tension between IFP-supporting hostel-

dwellers and ANC-supporting residents in the area. PHASHA, Abram Madibeng, was stoned to death by members of the ANCYL and residents of Driekop, Lebowa, on 14 February 1993. Mr Phasha was believed to have caused the disappearance of a young man through witchcraft. Two ANCYL members were granted amnesty for the attack. The third applicant is now deceased (AC/2000/077). PHASHA, Thomas (40), a COSATU member, died nine months after he was shot by SAP and SADF members in Tembisa, Tvl, on 30 April 1986 at a mass gathering preparing for May Day. PHASHE, Steven (29), an ANC supporter, was continually harassed by the Security Branch in the Port Shepstone area in the mid-1980s. He eventually went into exile in 1985. On his return in 1987, he was detained in Port Shepstone, Natal, where he was severely ill-treated. He was eventually charged, convicted and sentenced to eight years' imprisonment, reduced on appeal to four years. He died from an unspecified illness in 1989 while in prison. PHASWANA, Khorombi Josius (23), was arrested and detained by members of the Venda Police and SADF in Thohoyandou, Venda, on 28 July 1989 and accused of attempting to kill the acting headman. PHASWANA, Ndanganeni Petrus (32), was tortured in detention by named members of the Venda Police at Sibasa police station, Venda, on 6 January 1982. Reverend Phaswana was reportedly a monitor of human rights abuses for the IRC and Amnesty International. PHATANG, Wilfred Kotope Chivos (23), an ANC supporter, was shot and injured by a known SAP member in Bloemfontein on 14 April 1990. A police vehicle approached Mr Phatang, who had been participating in a protest, and one of the occupants of the vehicle opened fire, hitting him in the leg. PHATHI, Tseko Jacob (50), an ANC supporter, was shot dead in Sebokeng, Tvl, in a DRIVE-BY SHOOTING on 22 May 1992. Mr Phathi was killed with two others. PHATLANE, Lucky Joseph (19), a COSAS and SAYCO member, was shot dead on 10 November 1990 by members of the SAP in Atteridgeville, Pretoria, when police disrupted a march to protest against electricity cut-offs in the area. Mr Phatlane was ordered to open his mouth and was shot through it. PHATO, Magamonke Stanford (35), a PAC member, was detained by the members of the SAP near Qamata, Cofimvaba, Transkei, in 1963. He was suspected of having shot dead an unnamed tribal secretary but was later exonerated. He was later fined R80.00 for furthering the aims of a banned organisation.

Reference 1722 - 0.01% Coverage

SABELO, Evelyn (53), an Inkatha leader, was killed in a hand grenade explosion at her home in Umlazi, Durban on 22 August 1986. The explosion, caused by a named perpetrator, allegedly a UDF supporter, occurred in the aftermath of the killing of human rights lawyer Victoria Mxenge. Ms Sabelo's son was severely injured in the explosion. SABELO, Florence (34), had her house in Bhambayi, near KwaMashu, Durban, burnt down by unidentified persons on 16 February 1992 in violent conflict between ANC and IFP supporters in the area. One person was killed and seven homes burnt down in Bhambayi in February 1992. SABELO, Ian Bongani Smith (21), an Inkatha supporter, was severely injured in a hand grenade explosion at his home in Umlazi, Durban, on 22 August 1986. His mother, who also died in the attack, was a well-known Inkatha leader. The explosion, caused by a named perpetrator, allegedly a UDF supporter, occurred in the aftermath of the killing of human rights lawyer Victoria Mxenge. SABELO, Jabulani (34), an ANC supporter, was shot by IFP supporters in KwaDlangezwa, KwaZulu, near Empangeni, Natal, during 1992. He died of his injuries at Ngwelezana Hospital on 9 May 1993. SABELO, Jabulani, an ANC supporter, was shot and stabbed to death by IFP supporters at Ongoye, KwaZulu, near Empangeni, Natal, on 10 May 1993. SABELO, Johannes (50), an ANC supporter, was shot dead by Inkatha supporters on 25 December 1985 in Ezimbokodweni, Umbumbulu, KwaZulu, near Durban, in what became known as the UMBUMBULU MASSACRE. SABELO, Thuleleni Irene (49), an ANC supporter, had her house at Ekuthuleni, Umlazi, Durban, burnt down by IFP supporters on 2 February 1992. See EKUTHULU LENI ATATACKS. SABELO, Winnie, a member of the IFP Central Committee and the Umlazi Dispute Resolution Committee, was shot dead in his shop by ANC supporters on 7 February 1992 in

Umlazi, Durban. SABI, Eddie Simphiwe (18), Tokoza COSAS general secretary, was severely beaten by members of the Special Branch in 1986 in Tokoza, Tvl. The police were reportedly seeking information on student activists in the area, many of whom had gone into exile. SABOSHEGO, Potlako Mokgwadi

Reference 1723 - 0.01% Coverage

competition for resources and political dominance in Bhambayi, near KwaMashu, Durban, led to intense political conflict between the ANC-aligned 'Red' faction and the increasingly IFP-aligned 'Green' faction. The latter was alleged to have the support of members of the ISU. Monitors estimated that as many as 200 Bhambayi residents died violently between May and July 1993. When an IFP branch was launched in the area in August 1993, nine people were killed and 11 injured, and 18 houses were burnt down. About 22 deaths and 19 injuries in 14 incidents were recorded in September 1993. The death toll for the year was more than 300, and hundreds of homes were burnt down. Richmond attacks : At least 16 people from ANCs supporting families were killed at Ndeleni, Richmond, Natal, between 21 and 23 June 1991 when IFP supporters, allegedly transported by the police, carried out attacks on ANC supporters in the Ndeleni, Magoda, Esimozomeni and Townlands townships of Richmond. Two IFP supporters were granted amnesty for their role in the attacks. Richmond Farm arson attacks : A series of arson attacks that took place between 11 and 15 February 1990 at Richmond Farm, KwaMashu, Durban, in violent political conflict between UDF supporters and AMASINYORA vigilantes. The Amasinyora launched attacks on two areas in KwaMashu, destroying about 30 homes on the first day, most of them belonging to ANC supporters. ANC supporters retaliated by attacking Siyanda and Richmond Farm. The conflict erupted shortly after the release from prison of Nelson Mandela, and retaliatory attacks between the two groups continued for about six days, setting fire to between 200 and 300 homes. More than ten people were killed, including a member of the KZP. Thousands of residents were forced to flee the area. right-wing attacks : Prior to February 1990, violations committed by members of right-wing organisations took the form of isolated attacks with a strong racist character. During the early 1990s, members of right-wing organisations, perceiving themselves to be placed under siege by the process of constitutional negotiations for a democratic dispensation, carried out a large number of attacks aimed at securing the political interests of conservative Afrikaners. Isolated racist attacks on individuals were replaced by mass demonstrations and orchestrated bombing and sabotage campaigns. Between April 1993 and May 1994, right-wing groups engaged in a range of activities to disrupt the negotiations process then underway, and later to destabilise the electoral process. Many of these acts were directed against persons perceived to be supporters and leaders of the ANC, the SACP, the UDF, the PAC and the National Party, and resulted in gross violations of human rights. Violations of a purely racial character were also carried out against black people.

Tunisia-Truth-and-Dignity-Commission-Report_executive_summary_report> - § 279 references coded [6.14% Coverage]

Reference 1 - 0.02% Coverage

In this report, the Truth and Dignity Commission presents the output of its proceedings, which feature a diagnosis of the shortcomings that had rigged the State's institutions over 58 and a half years. These failures were behind gross human rights violations, financial corruption and embezzlement of public funds. They also resulted in the swindling of the State's resources and wealth, plunging the country in indebtedness, depriving the utilities of health and education of essential resources and squandering development opportunities. Such indebtedness has had its toll on the economic, social and cultural rights of Tunisian citizens for a long time.

Reference 2 - 0.01% Coverage

We have expected the perpetrators of human rights violations, and those implicated in financial corruption and embezzlement of public funds to come forward to TDC with their

Reference 3 - 0.01% Coverage

- Proposing the recommendations pertaining to "political, administrative, economic, security, judicial, media, educational and cultural reforms along with other reforms designed to prevent return to tyranny, oppression, violation of human rights and mismanagement of public funds."

Reference 4 - 0.01% Coverage

TDC's message was not so much about addressing the legacy of the past but rather about construction and planning for the future during which our country shall be transitioning from the state of tyranny to a democratic system that contributes in the consecration of the human rights system with all of its legal, humanitarian and social dimensions.

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Reference 16 - 0.02% Coverage

The Tunisian people made their choice, deciding to tackle past human rights violations in a peaceful fashion. Indeed, by means of Organic Law 23-2013, the lawmaker entrusted the Truth and Dignity Commission with the task of implementing the process of Transitional Justice. This chosen course consists of a set of complementary mechanisms and tools designed to grasp and address past human rights violations through truth seeking and unveiling of these violations, holding the perpetrators to account, and by providing reparation and rehabilitation for the victims.

Reference 17 - 0.02% Coverage

Probing into violations pertaining to financial corruption and embezzlement of public funds, which ultimately results in the dismantlement of the system of corruption as gross human rights violations remain inalienably connected to financial corruption and embezzlement of public funds. Providing leeway for arbitration and reconciliation in the areas of human rights violations and financial corruption and embezzlement of public funds: This tool paved the way for those having perpetrated such violation to appear before TDC and face their victim before confessing to the wrongdoing perpetrated and asking forgiveness and pardon. Unfortunately, this important mechanism has not been harnessed by most of the alleged perpetrators, intentionally or

Reference 18 - 0.01% Coverage

This course of action is aimed at achieving national reconciliation, drafting and documenting collective memorialization, establishing guarantees of non-recurrence of violation and transition from the state of totalitarianism to a democratic system consecrating the human rights system.

The gravity of human rights violations is likely to affect national unity among the different people and between the people and the State.

Reference 19 - 0.01% Coverage

3. Establishment of the Ministry of Human Rights and Transitional Justice

Tunisia is characterized by the establishment of a ministry tasked with Transitional Justice, with human rights activist Samir Dilou appointed as its Minister. The latter's main accomplishment consisted in the preparation of an organic law for Transitional Justice that he

Reference 20 - 0.06% Coverage

The Ministry of Human rights and Transitional Justice was entrusted with the task of fleshing out a strategic perspective designed to address human rights violations that had occurred in the past. To that effect, the Ministry set up a technical committee composed of representatives from human rights civil society activists. The Committee's proceedings culminated in the draft Transitional justice Bill. In order to pursue the bill, the Ministry, in association with the Committee, staged a national dialogue over a period of six months, with regional committees being established nationwide under the supervision of the Ministry and tasked to gather ideas and perspectives involving a large number of victim associations and civil society components.

Moreover, the Ministry of Human Rights and Transitional Justice attended to enforcing procedures regarding provisional compensations as per Decree number 1 of the year 2011 on General Amnesty and Decree number 97 of the year 2011, dated on 24 October 2011 on compensation for the benefit of 17 December 2010-14 January 2011 Liberty and Dignity Revolution's Martyrs and Wounded.

The Transitional Justice Draft Bill was submitted to the National Constituent Assembly by the Minister of Human rights and Transitional Justice on 22 January 2013. The Bill had been debated over for a period of six months within the Parliamentary Committees, resulting in a Joint Report³ drafted by the General Legislation Committee and the Committee for Rights and Liberties. It meticulously depicted deliberations of 23 meetings during which discussions and hearings sessions were held among representatives of the Ministry of Human rights and Transitional Justice and international experts. The Bill was voted in unanimously during the General Assembly held on 15 December 2013.

After the dissolution of the Ministry of Human Rights and Transitional Justice in January 2015, the Truth and Dignity Commission failed to find archives pertaining to victims' files deposited at the Ministry despite numerous requests lodged at the Prime Ministry, which hindered TDC efforts to pursue its duty on the request of file depositors.

Reference 21 - 0.01% Coverage

and address past human rights violations. This process focuses on truth seeking, holding to account and prosecuting perpetrators, providing reparation, and rehabilitation for the victims so as to achieve national reconciliation and preserve national collective memory, documenting it and providing for assurances of non-recurrence of these violations, transitioning from the status of dictatorship to a democratic system that consecrates the system of human rights."

Reference 22 - 0.01% Coverage

databases pertaining to human rights, Huridocs, to double check the safety of the database over two stages, with experts reiterating the quality of IFADA database, its credibility and its accurate statistical exploitability.

Reference 23 - 0.02% Coverage

IFADA (statement taking software) has been designed to accept all kinds of statements given by victims and witnesses regarding all types of gross and systematic violations of human rights, during the period between July 1955 and December 31, 2013. IFADA has, therefore, become the main database in which information, data, and personal and confidential data pertaining to the victims are collected as a main reference for the inquiry and investigation team. IFADA comprises 32 categories of violations as follows:

Reference 24 - 0.01% Coverage

9. Prosecutions against student groups and organizations (1955-2010) 10. 1984 Bread Riots 11. Violations related to the fight against terrorism 2003. 12. 2008 Mining Basin Riots. 13. Circular 108 victims. 14. The (December 17, 2010 - January 14, 2011) Revolution Events 15. Post-Revolution events until 31 December 2013. 16. Electoral fraud 17. Abuses targeting human rights activists. 18. Financial corruption General Statistics regarding Violations Violation

Reference 25 - 0.01% Coverage

The Fact-finding and Investigation Committee shall be tasked to: - Search, investigate and probe into files, petitions, complaints and testimonies. - Conduct all inquiries and investigations into serious and / or systematic human rights violations, whether perpetrated by State agencies or individuals acting on its behalf or under its protection or by organized groups.

Reference 26 - 0.02% Coverage

The economic and social conditions experienced by the victims and their families (deprivation of income, denial of treatment card, lack of health facilities or psychological counseling) contributed to the deterioration of their health, affecting all areas of their lives (marital, family, professional and social). For these reasons, their demands were basically material and health-oriented. This makes medical care, psychosocial counseling and rehabilitation basic necessities so that victims of human rights violations can restore their physical and psychological integrity and natural abilities, to live their normal lives and be reintegrated into society and their ordinary environment.

Reference 27 - 0.01% Coverage

1. First public hearing session: Gross human rights violations²⁵ 2. Second public hearing session: Gross human rights violations²⁶ 3. Third public hearing session: Gross human rights violations²⁷ 4. Fourth public hearing session: Gross human rights violations²⁸ 5. Fifth public hearing session: Revolution's events²⁹ 6. Sixth public hearing session: Black Thursday events³⁰ 7. Seventh public hearing session: Violations targeting women³¹

Reference 28 - 0.01% Coverage

These sessions included 108 testimonies from victims and witnesses. In this regard, TDC decided to give priority to gross and systematic violations of human rights, including murder, torture, enforced disappearance, violation of the right to a fair trial, sexual abuse, arbitrary arrest, deprivation of livelihood and abuse of the right to work, violation of the right to health and education, administrative control, and violation of the right to practice religious beliefs.

Reference 29 - 0.02% Coverage

The Transitional Justice system pursued by the Tunisian legislator under Organic Law No. 53 of 2013 (which preceded the Constitution) is unique in its choices, standing out from the rest of the experiences by setting high threshold to its objectives with a time frame extending from July 1, 1955 to December 24, 2013. Moreover, its mandate covered several and various areas including human rights violations, killings, sexual assaults, torture, enforced disappearances, financial corruption, embezzlement of public funds, electoral fraud, and other violations listed in Chapter 8 of Law 53, and which TDC raised to include 32 violations mentioned on an open list updated by TDC reaching 32 violations.

Reference 30 - 0.03% Coverage

Article 42 of the Organic Law on Transitional Justice requires that TDC refer to the Public Prosecution Office only files where it is established that gross human rights violations were committed. This requires selection of files with sufficient evidence substantiating occurrence of the violations.

The total number of files received by TDC regarding gross human rights violations that occurred from 1 July 1955 to the end of 2013 amounted to 62 720. This raised eyebrows as of the ability to deal with them in the limited time period of TDC's mandate set at four years, subject to extension by Commission's decision for an additional year and pursuant to Chapter 18 of Organic Law Number 53/2013.

Specialized Criminal Chambers are also materially and practically unable to adjudicate all the violations submitted by TDC for failure to provide full-time secondment for their members. These chambers are also required to adjudicate cases related to gross human rights violations pursuant to international treaties (Chapter 8 of Organic Law on Transitional Justice) such as electoral fraud, enforced disappearances, forced migration for political reasons and financial corruption...

Reference 31 - 0.01% Coverage

Prosecution strategy, endowed with objectivity and transparency, allows adoption of criteria establishing the most substantiated cases, which include the most serious human rights violations, which in turn have caused the most serious crimes to be committed by the most liable actors. This entails implication of various actors and determination of time periods within TDC's mandate along with categories of perpetrators.

Reference 32 - 0.01% Coverage

TDC refers only gross human rights violations as defined above, and the gravity of any human rights violation is determined by recourse to the following criteria: - Nature of the right violated (such as the right to life - most serious violation). - Scope of the aggression (e.g. number of victims, extension over time, wide geographical scope)

Reference 33 - 0.01% Coverage

These standards make it possible to establish a scale of gravity measuring which human rights violations are most serious.

Reference 34 - 0.02% Coverage

International conventions and covenants did not contain any definition to gross human right violation. Some acts are inherently characterized to be serious human rights violations, including criminal acts that infringe the right to life, the right to bodily integrity, the right to security and the right to liberty. In addition to violations that are considered grave in nature, and in view of the jurisprudence of human rights bodies (the UN system, African systems of human and peoples' rights), factfinding and investigation commissions and truth commissions, a serious human rights violation can be characterized based on the following criteria: - Nature of the right -

Reference 35 - 0.02% Coverage

The term crime against humanity is a characterization of gross human rights violations set out in the Charter of the Nuremberg Tribunal annexed to the 1945 London Convention, which established the concept of crime against humanity in international criminal law. Article 6, paragraph C, of the Charter characterizes a crime against humanity as part of the following violations: willful killing, extermination, deportation, inhumane acts perpetrated against any group of civilians before and during wars, persecution for political, ethnic, or religious reasons, and perpetration of any of the crimes that shall fall within the jurisdiction of the Court or in connection with such crimes, whether or not they constitute a violation of the national law of the State in which they were committed. "

Reference 36 - 0.01% Coverage

State Apparatuses are the structures used by the State to exercise its powers. Obviously, there is a direct correlation between both the executive and judicial branches and the gross, systematic violations of human rights. On the other hand, the legislative power, by virtue of its law-making and oversight function, has an indirect bearing on such violations.

- The Executive Apparatuses in Relation to the Gross Human Rights Violations

Reference 37 - 0.01% Coverage

gross and systematic violations of human rights. (In addition to The General Directorate of Prisons and Rehabilitation, under the Ministry of Justice).

Reference 38 - 0.01% Coverage

- The Judicial Apparatuses (civilian, administrative, financial and military courts) in Relation to the Gross Violations of Human Rights

Reference 39 - 0.04% Coverage

Violations committed by official bodies include any wrongdoing by a judge with the intention to cover up gross and systematic violations of human rights, whether by refusing to consider them without just cause, by dropping or refraining from adjudicating, without undue delay, on the cases filed by the persons

having sustained human rights violations, by acquitting perpetrators in flagrant disregard of the evidence and arguments presented, or by rendering sham decisions in disproportion to the gravity of violations. They also include the conviction of defendants based on unsubstantiated evidence, or in the absence of conditions for a fair trial where due process has been breached.

The legislator expanded the scope of violations, and stipulated in Article 3 of the Organic Law N°53/2013 that the conduct adopted by groups or individuals who acted in the name of State Apparatuses or under their protection, even if they do not have the capacity or authority to do so, is considered an infringement of human rights. The groups and individuals who are not part of State apparatuses, and who committed or were involved in violations of human rights under whatever form, whether by abetting, facilitating or concealing them at the instigation of these apparatuses and under their protection or for any other reasons, should be held liable and accountable.

Reference 40 - 0.02% Coverage

These are groups working in an organized and structured framework, with a view to planning and preparing to commit gross violations and abuses against human rights, which requires the establishment of a certain organization among their members. An organized group is usually overseen by a commander who regulates the activities, sets the objectives and allocates the roles among the affiliated members who would endeavor to provide all the resources required for the successful execution of their operations.

Reference 41 - 0.01% Coverage

- Written reports on the facts by international organizations and civil society, such as the Committee against Torture and the Human Rights Committee.

Reference 42 - 0.02% Coverage

Although the identification of physical perpetrators of gross violations of human rights is a significant link to uncover the truth and to prevent impunity, the investigation strategy specifically aims at detecting the commanders implicated in these violations. Such officials have surely played a pivotal role, for their mere explicit or implicit incitement, the complicit silence they maintained in respect of the abhorrent practices conducted by the officers under their supervision and authority, and their reluctance to exercise their preventive role to counter abuses, constitute the main causes leading to the occurrence of such violations.

Reference 43 - 0.03% Coverage

International agreements⁴⁴ ratified by the Tunisian State, on the protection of human rights, ascertained that one of the pressing duties of any incumbent political authority is to protect its citizens and every person on its territories from any violation of his right to life and bodily integrity. Article 3 of the Universal Declaration of Human Rights stipulates that "everyone has the right to life, liberty and security of person". In the same vein, Article 6 (1) of the International Covenant on Civil and Political Rights provided that "every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life". The Convention against Torture, ratified pursuant to Law N°79, dated July 11, 1988, stipulated in Article 2 (1) that "each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its

Reference 44 - 0.02% Coverage

In the absence of provisions in the Tunisian criminal legislation expressly stating the responsibility of commanders for one of the violations of human rights, the ratified international agreements should be implemented, pursuant to the above-mentioned Article 8, in order to bring into force that mechanism adopted by international criminal law.

The concept of commanders' responsibility for the gross violations of human rights and for crimes against humanity is enshrined in the charters and conventions related to international criminal law. Proving this responsibility requires three primary elements: - Existence of a superior⁴⁵-subordinate relationship - The superior should know or has the reasons to know that one of his subordinates or all of them committed, or prepared to commit, criminal acts and gross violations.

Reference 45 - 0.05% Coverage

It specifically refers to inaction or omission on part of the officials in charge and police departments under the Ministry of the Interior. Institutional responsibility is manifested in the disregard for the obligations incumbent on the security apparatuses, whether intentionally or due to the ignorance of the provisions of the international conventions and charters and what the laws have provided in terms of measures aiming at respecting bodily integrity of arrested or detained persons. It is incumbent on these bodies to take the necessary preventive measures to thwart the despicable practices in breach of human rights, and to preserve the physical safety of the detained persons. It is therefore imperative to further train officers and develop the working methods of security apparatuses. An efficient monitoring system, which allows for identifying and remedying the security units where violations of human rights were committed, should be established with a view to preventing their recurrence in the future. The perpetrators should also be punished and redress should be provided for the aggrieved parties.

The official stakeholders usually resort to denying the violations in order to cover them up, protect the offenders, and prevent the victims and their families from having access to justice or forwarding complaints to national and international human rights organizations and associations. They also resort to interference with the judiciary, with the aim of obstructing the course of judicial investigations and leading cases to dismissal.

Reference 46 - 0.02% Coverage

TDC referred 69 indictments, including 1120 cases in which 1426 persons were charged with violations of human rights. It has completed investigating a number of files addressing the following contexts, periods and subjects: - Violations committed on the Husainid family (1956-1960) - Trials of the Supreme Court of Judicature (1957-1959) - Group 68: State Security Court (Baathists, Arab Nationalists, nonpartisans) - 1973 and 1974 trials in the State Security Court (the Tunisian Worker Group and Arab Nationalists)

Reference 47 - 0.03% Coverage

The indictments offered a new model that lays the foundation for a new jurisprudence, and that should be addressed and analyzed by experts in law, especially that TDC incorporated in this model the approach of "strategic litigation". The latter seeks to create a progressive jurisprudence that contributes to adjusting the application of standards and legal principles so as to ensure full respect of human rights.

The investigations revealed the physical perpetrators' identity, suspected of gross violations of human rights, despite their disguise under aliases, such as Bocassa, ElHadj, Dahrouj, Rambo, Hallas, Elkass and Boukersha. The offenders, who are mainly law enforcement officers under the Ministry of the Interior and particularly under the State Security Department, were referred to the specialized criminal chambers for gross violations attributed to them.

Reference 48 - 0.02% Coverage

Pursuant to Article 39 of the Organic Law of 2013 on the establishment and regulation of Transitional Justice, which provided for “determining the responsibility of the organs of the State” for these violations, TDC observed that the Ministries of the Interior and Defense, in view of possessing the right to use public force, were among the most important organs of the State, whose various branches as well as the security and military agencies under their authorities, were involved in TDC of gross and systematic human rights violations. (In addition to The General Directorate of Prisons and Rehabilitation, under the Ministry of Justice).

Reference 49 - 0.01% Coverage

violations of human rights Jendouba 1987-1996

Reference 50 - 0.01% Coverage

Victims of gross violations of human rights Bizerta 1987-1996

Reference 51 - 0.02% Coverage

Article 42 of the Organic Law N° 53 of 2013 stipulated that: “TDC shall refer to the Public Prosecution the cases in which TDC of gross human rights violations was established and shall be notified of all the measures which are subsequently taken by the judiciary”. Pursuant to this, all the cases referred to public prosecutors included sufficient evidence⁴⁸ that crimes against humanity were committed. These cases were brought before TDC’s Council, which decided, after having reviewed them and their corroborations, and having considered the investigations’ outcome, to refer them to the Specialized Chambers for adjudication.

Reference 52 - 0.01% Coverage

During this session, the provision of immediate health care to victims by means of health cards bearing the signature of both the Ministry of Health and the TDC, in a fashion consistent with the action carried out jointly with the former Ministry of Human Rights and Transitional Justice, was discussed. The validity of the health cards, however, should not exceed a period of 6 months with part of the fees incurred paid by the TDC.

Reference 53 - 0.01% Coverage

- Ministry Liaising with Independent Bodies, Civil society and human rights

Reference 54 - 0.01% Coverage

In 2017, the TDC prepared a proposal for the Dignity Fund draft Order, which was addressed to the Presidency of the Government, following which coordination meetings were held with the Minister of Relations with Constitutional Bodies, Civil Society and Human Rights as well as with the Presidency of the Government.

Reference 55 - 0.01% Coverage

The UN cooperation included UN Women who supported the TJ process, particularly through a field study⁵¹ on the impact of human rights violations on the families of political opponents. The study used the TDC's database and the victims' testimonies collected by the TDC.

Reference 56 - 0.02% Coverage

The enactment of this law was a setback to democrats in Tunisia. In fact, human rights associations in the country described it as a gateway to impunity and a green light to perpetrators to carry on with human rights violations and the embezzlement of public funds.

⁶⁰ The Venice Commission was established by the Council of Europe in 1990 with the aim of providing legal advice to Member States, specifically, to assist those countries that aspire to bring their legal and institutional structures in line with international standards in the areas of democracy, human rights and the rule of law. The Venice Commission has been consulted on several occasions from various Tunisian institutions since 2011, specifically from the National Constituent Assembly, regarding the drafting of the Tunisian Constitution.

Reference 57 - 0.02% Coverage

Having regard to the fact that extending the TDC's term, or lack thereof, has no impact on the continuation of TDC's operation and execution of mandate since the legal and administrative existence of the TDC shall continue under the principle of annual budget allocation. Such principle requires that TDC remains in operation until the closing of accounts and the submittal of the TDC's reports to the relevant authorities pursuant to the joint declaration between the TDC and the Ministry of Relations with the Constitutional Bodies and the Civil Society and Human Rights dated August 24, 2018. The President of the TDC, acting in this

Reference 58 - 0.01% Coverage

In most of the cases processed, the defendant is the State General Litigation Officer on behalf of the State or a ministry, particularly the Ministry of Interior as regards human rights files. During the term of office of the TDC, the State General Litigation Officer consistently rejected arbitration and reconciliation in the cases of human rights violations.

Reference 59 - 0.01% Coverage

Despite the many letters sent by the TDC, the Ministry of State Property refused to dedicate part of the location of the former 9 Avril prison to erect a memorial, such as a museum, or a memorialization center regarding grave violations of human rights.

Reference 60 - 0.01% Coverage

After TDC held talks with the Minister of Human Rights Liaising with Constitutional Bodies, an agreement was reached by the two parties to rectify the negative position and to sign an agreement published in a joint declaration ⁶⁵ whereby the Government reconfirmed its commitment to complete the process of Transitional Justice.

Reference 61 - 0.01% Coverage

The systematic campaign against the TDC gained momentum in December 2016 with the publication of 95 articles full of falsehoods and slanders at a time when the first public hearings about human rights violations were held.

Reference 62 - 0.05% Coverage

As a negative reaction to the first hearings held by the Specialized transitional justice chambers, the National Front of Police Unions, in a statement published in October 2018 called upon all members of the police institution, be they serving or retired,⁶⁸ to stand in the way of any attempt to hold the perpetrators of grave violations of human rights under the dictatorship to account. The statement described Transitional Justice as "a vindictive justice that tramples on the constitutional, universal and legal principles" despite the fact that in referring the cases to the Specialized Chambers, TDC fully complied with the Constitution and the Law on Transitional Justice.

The police unions reiterated their explicit rejection of the TJ process, which they described as dysfunctional. They further added that the trials in the context of Transitional Justice represent "an explicit violation of international treaties and conventions as well as of the Constitution... let alone the fact that these trials lack the guarantees of fair trial and breach the principles of human rights."

In a dangerous precedent, the National Union of Internal police Forces called for a boycott of all measures taken to ensure the security of all the hearings held before the TJ specialized chambers on Tuesday January 8, 2019 in the Gabes Trial (First Instance) Court. The decision was the result of the fact that the Specialized Chambers had summoned some perpetrators of grave violations of human rights to appear before the courts, which led the Union to claim that the TDC "had prepared the nooses to please some parties". This has little to do with reality and could only be seen as casting doubt on the integrity and independence of the judiciary to which the cases have been entrusted. It is also an attempt to pit the public opinion against the

Reference 63 - 0.05% Coverage

In recognition of the role that could be played by art and artistic creativity in preserving the national memory, entrenching the values of citizenship and human rights and guaranteeing non-repetition, the TDC gave the stage to Ammar Letifi, Hammouda B. Hassine, Kaouther Dhaoui, Hajer Zeidi, Asma Oueslati and Mohamed Salah Oueslati to perform a play called "Dignity"⁸² under the stage direction of Mohamed Sabeur Oueslati. The play, which won the public's admiration, represented in an ironic style and using the light and sound duality, the violations against human rights and liberties committed under the totalitarian regime and their impact on society. The play presented a snapshot of the reality of human rights at that time and a typical portrait of the prisoner and his relations with the family and the society. In an ironic tone, the play expresses criticism towards the state institutions and how they were used to violate human rights.

A poem was read by poet Bechir Khalfi⁸³ in which he drew the contours of the relationship between the ruler and the ruled and recounted the abuses inflicted on all victims regardless of their political affiliations. The poem also described the battle waged by political parties, associations and organizations against the dictatorship and criticized the oppression of liberties, the strangling of the press through censorship and the silencing of the voices of journalists. In his poem, Bechir Khalfi, painted a picture of the human rights violations committed by the various State arms against the opposition. On the same occasion, the Ennajma School Chorus⁸⁴ sang a number of songs on hope and life before singing the national anthem as a symbol of the future role of children.

Reference 64 - 0.01% Coverage

The Article 14 of the Organic Law No.53 of 2013 on the establishment and organization of transitional justice states that: "Institutional reform aims at dismantling and rectifying the system of corruption, oppression and tyranny so as to guarantee the non-repetition of the violations, the respect of human rights as well as the establishment of a State of Law."

Reference 65 - 0.02% Coverage

Since the independence, the overlap between the ruling party and the state presented a fundamental form to impose authoritarianism and tyranny. The multiplicity of the overlap mechanisms between the party interests and the state institutions is considered as the most prominent conclusion reached through research and investigation relying on the archives of the Truth and Dignity Commission. Moreover, delegation of control and security missions of repressive nature and limiting freedoms to the local and regional structures of the party, has contributed to the rise of human rights violations to include all areas of citizens' lives as well as the negative repercussions of such an unhealthy relationship on the developmental capacities of the society at all levels.

Reference 66 - 0.02% Coverage

The members of the local and regional coordination committees monitor all the movements, events, and meetings organized by the groups or the individuals classified as adversarial or dissident, whether they are secret or public. Then, detailed reports are immediately issued. Examples include: On September 21st, 2001 a correspondence detailed the content of the meeting of the members of the steering committee of the Tunisian League for the Defense of Human Rights (LTDH) concerning the case of sexual harassment of the secretary of the league and committed by "K.K". The correspondence included data about the meeting of the members of the Tunisian Association of Democratic Women (ATFD) and their position as to the sexual harassment case.

Reference 67 - 0.01% Coverage

- The Publishing of an article entitled: "Judges, fear God and join your people." By "R.Gh" • A statement issued by 3 international human rights organizations and calling on the Tunisian authorities to release all prisoners of conscience."

Reference 68 - 0.02% Coverage

The previous authoritarian and tyrannical regimes largely based their domination upon denunciation as a mechanism of surveillance and domination on the whole society. Indeed, each political system established a network of informants, rooted in all political, economic, and cultural fields including the surveillance of the private life of citizens, especially dissidents and political opponents, but also some elements within the system. There was also a close and direct relationship between the reports of informants and the violations targeting dissidents from the different political movements as well as human rights activists.

Reference 69 - 0.06% Coverage

Indeed, TDC (IVD) found in the archives of the Presidency of the Republic reports regarding the treatment of the correspondences by the "supervision committee". In this context, it had been proved that correspondences from some of the political dissidents living abroad in Norway, Austria, Greece, and Switzerland or from human rights organizations and sent to some people active in human rights fields were seized. It was stated in the memorandum¹⁰³ sent to the former President of the Republic Zine Al Abidine Ben Ali, in the daily summary of the most important information issued by the security services on July 1st, 1995, including several fields among which the postal supervision: "We found 5 parcels addressed by Amnesty International to its Tunisian Section, among the normal external mail from Belgium. Each package contains 20 copies of the organization's annual report for the current year (please find the report). The report focused on the forms of human rights violations in 151 countries, including Tunisia. It disclosed the elements responsible for the abuses. When it comes to Tunisia, it mentioned the arrests among Nahdha partisans and the Tunisian Communist Workers Party elements starting in 1991. It also highlighted the fact that the bad conditions experienced by the prisoners led them to launch hunger strikes and add to at least 4 people among them dying within one year. Most of the correspondences issued by human rights organizations and foreign news agencies, or their counterparts, were also seized after reviewing their content in order to cut off all communication mechanisms between political opponents or human rights activists. The Tunisian League for the Defense of Human Rights (LTDH), the National Council for Liberties in Tunisia (CNLT), and Amnesty International in Tunisia are among the most prominent organizations whose correspondence was violated.

Reference 70 - 0.02% Coverage

After all the violations he committed, Sami Kallel was appointed at the Tunisian Institute for Strategic Studies of the Presidency of the Republic in charge of the rehabilitation of terrorism prisoners' case !!! This was also the case for Tawfik Bououn, a police officer, who was in charge of attacks on the civil society militants during the last decade of the Ben Ali's regime. Indeed, he was appointed human rights adviser to the Ministry of Human Rights and the relationship with independent bodies under Minister Kamal Jendoubi (2015), which sparked the protests of the human rights organizations.

Reference 71 - 0.01% Coverage

108 The investigations within TDC (IVD) succeeded in revealing the identities of the physical actors of the gross violations of human rights despite their hiding behind pseudonyms and they were referred to the specialized judicial chambers for the violations they have committed. 109 Article^{101bis} of the Code of Penal Procedure. 110 See the section related to interrogation and accountability.

Reference 72 - 0.04% Coverage

The despotic regime in Tunisia, in particular, under the rule of Ben Ali, was characterized by the use of the administrative control and security pursuit and perverting the administrative control to make it a mechanism of abuse of former political prisoners and human rights defenders, based on orders and oral instructions, and preventing them from making money and reintegrating in society. Daily signing in police stations becomes a pretext to put them in a prison without barriers. Things are taken to the extent of forcing the former prisoner to sign each two hours which destroys each social and professional lives and undermines his psychological balance to the point of thinking of suicide or wishing to go back to the actual prison that seems to him more spacious. TDC (IVD) examined the exposure of 15754 victims to administrative control and security pursuit from the total of the victims who filed cases with the IVD which numbered 62720; It was not a complementary sentence as it was stipulated by law, it was rather an

outlawed comprehensive punishment. It mainly targeted young people with a rate of 53.4%. It also concerned women with a rate of 16% and men with a rate of 84%. TDC (IVD) noticed that the Islamist Movement was the political family which was the most targeted by this punishment in the decades of the 1990s and 2000s.

Reference 73 - 0.01% Coverage

114 See the Human Rights Watch Report <https://www.hrw.org/ar/report/2010/03/24/256042> 115 International Covenant ; Article12 African Charter Article12 116 See the European Court for Human Rights Guzzardi against Italy (1980)EHRR5333 paragraphs 92 and 94.

Reference 74 - 0.08% Coverage

Victims of security control agree that it is "suffocating", "permanent", and "harsh". It is usually paired with daily and night raids thus causing fright for the victims and their families alike, in particular children and parents, because of their specific psychological characteristics. Police officers, members of the cells of the Party (RCD), as well as informants, some relatives and neighbors were the ones who accomplished the surveillance mission. In this context, the victim R.GH recalls the restrictions she faced: "It is really hard to talk about the close surveillance, about the parking cars for days, weeks then months outside our house. To enter their home, the house's owners have to show their I.D. It is really hard to talk about the siege they were imposing on my sisters and brothers. One of my brothers was the head of a national company and they used to go to his work to threaten him. They did the same with my sister. My brother, a journalist, was forced to resign to avoid a coverage about an "affair" they purposely wanted him to do. Indeed, I was among the detainees. Security forces presence was permanent, especially that of cars and elements standing outside the house and in the street supervising all the passersby. Being inside the prison is much more comfortable than being outside, moving and communicating in this continuous state of fear and fright and that feeling that you can be raided at any moment." Security control affected victims, their family members and the human rights organizations too. The feminist human rights activist A.B mentions that she has been subjected to close and permanent security surveillance since the 1980s, especially in relationship with her activism in the civil society. "Our association used to be surrounded by security forces. We could not have meetings in public places. We did not have media visibility. They used to wiretap our conversations. Internet connection was very bad and was not working properly. Same with the phone. There were restrictions. Sometimes harassment consumes you slowly. You cannot enjoy your rights normally. You suffocate to obtain what you need. Even to talk on the phone you have to fight!" Through constant and close administrative and security surveillance, security agents seek to target the family, which works to maintain the balance, cohesion and stability of the individual, family and society. By transforming the victim from a balanced and active individual in society into a psychologically collapsed and socially ostracized human being, through shedding these

Reference 75 - 0.02% Coverage

123 See the part about the « Coup Attempt » 124 Article22 of the law °70 of 1982 dated August 6th; 1982 related to the definition of the general organic law of the internal security forces "The military court in question shall be referred to the cases in which the members of the internal security forces are a party for an incident found in the scope of the work and affecting the internal and external security of the State or to maintain order on the public way and in public premises and public and private institutions during or after meetings, processions, demonstrations and gatherings". 125 It entered into force starting from

September 16th, 2011. 126 Human Rights Watch Report: Flawed Accountability Shortcomings of Tunisia Trials for killings during the Uprising.

Reference 76 - 0.04% Coverage

Trials of political opponents did not end with the abolishment of exceptional courts such as the Court of State Security. Indeed, the harnessing of the military, judicial, and administrative justice continued in the treatment of the relationship with the political opposition. Then, its instrumentalization expanded to include human rights militants and journalists, which turned the judiciary into a mere apparatus working under the instructions of the executive authority. This was accompanied with a total and systematic attack on the rights of defense. Indeed, its scope has been limited, its role has been surrounded. Some trials occurred without allowing lawyers to advocate even.¹³² This regression did not only affect the justice when it comes to political trials but it also affected ordinary justice common law which started suffering from the intervention of the regime, the tightening on human rights and the violation of the principle of equality before the law and the right to litigation. Indeed, whenever a trial was linked to an official of the executive authority or one of its protégés loyal to it, the judicial apparatus is hindered and all the claims or complaints against him were dismissed.

Reference 77 - 0.02% Coverage

The places of occurrence of human rights violations were not limited to the official places related to different security bodies such as detention centers, prisons, and police districts. Indeed, some of them were installed in irregular places such as private houses and agricultural farms like "Naassan"¹⁵⁵ "Mabrouka 1" and "Mabrouka 2" as well as the functional and administrative cars either after the raiding and arrest or during the transfer of the victim between different police stations. Indeed, these irregular places witnessed gross human rights violations, the most important of which are: sexual violence, rape and torture. Although such abuses frequently occurred in regular settings, such abuses reflected the despotism of the political system.

Reference 78 - 0.02% Coverage

The regimes of Bourguiba and Ben Ali established a network of informants in all the neighborhoods, communities, and villages with a main mission consisting in the surveillance of all political dissidents and human rights activists in addition to monitoring all social movements. Indeed, this network works on providing direct and real-time information to regional and local security services. Some official correspondences between different governors and the Ministry of Interior included an important amount of security data originating from the denunciations of one of the secret informants.

Reference 79 - 0.06% Coverage

Ben Ali's apparatuses and mechanisms used to tighten control on the content of the independent and opposition newspapers through the mechanism of legal deposit and the control before publication, at the printing press, after printing and at the distributor, and even readers were intimidated and punished when they are found in possession of one of these newspapers. Moreover, the regime exercised security control over the headquarters of opposition newspapers such as "Al-Mawkif", "Al-Tariq Al-Jadeed" and "Mouwatinoun." This period witnessed a rise in the number of periodicals with the shrinking margin of freedom and the multiplicity of yellow newspapers (Al Ealan, Kol Annas, Belmakchouf, Assarih, and Al Hadath). Achourouk, published by Dar Al Anwar, followed this tendency and became a daily newspaper

starting from November 7th, 1988. All these newspapers had been mobilized to defame dissidents and human rights defenders. "La Presse" published an evening newspaper in the French language then it turned it into an Arabic-language daily newspaper "Assahafa" in 1989. It became a nest for fictitious employment and a management that awards denounciators.¹⁶⁵ Abderrahim Zouari, secretary-general of the Democratic Constitutional Rally (RCD) planted a spy cell in Dar Assabah under the name of "Media Follow-up Cell". It used to draft reports about journalists and their editorial orientations. Jamal Eddine Karmaoui and Kamal Ayadi used to prepare these reports and send them to Ben Ali like the report they had prepared on December 14th, 1990.¹⁶⁶ It included the position of the newspapers published by Dar Assabah in the period between 15 and 25 November. It also accused Dar Assabah of peacefulness towards the Islamist trend and that it is "hunting" the news of dissidents and not covering the news of the party (RCD). It denounced Assabah newspaper editor in chief and revealed the reality of the internal conflict within the newspaper.

Reference 80 - 0.03% Coverage

The Tunisian Agency for External Communication (ATCE) was established on August 7th, 1990. It was under the direct control of the president of the republic, who defined its missions and appointed its general manager. Its objectives were: "strengthening the media presence of Tunisia abroad and presenting Tunisia's national policy in all fields". Then, it included the distribution of public advertising which had been used as a control tool on media performance by rewarding loyalists and punishing independents. The Agency (ATCE) spent huge amounts of money to hide the truth of systematic violations of human rights and public money abuse as well as to show the regime in the image of the defender and protector of human rights and freedoms at home and abroad. Several foreign communication agencies like: Image 7, Arab Media and others took advantage of these promotion campaigns. They received amounts of 10.154.457 million TD between 1998 and 2001.

Reference 81 - 0.07% Coverage

The regime has also worked on controlling and blocking mail through the use of viruses and Trojans. Indeed, the Internet police used to hide and obstruct the files linked to it. When the required message is opened, it disappears and is replaced by spam and sexual content. It is a breakthrough and infiltration of the privacy of correspondence in opposition to the international treaties ratified by the state and which are requiring the respect of the secrecy of paper and electronic correspondences. In the same context, some independent organizations including the Tunisian League for the Defense of Human Rights (LTDH) and the Tunisian Association of Democrat Women (ATFD) raised an outcry in response to this situation in September 2008: "We have been severely disrupted in our work for months. We cannot access our electronic mail anymore. When we succeed in that, our messages disappear or become unreadable and are swollen. This has nothing to do with technical problems or network problems, but clearly, it has to do with the control imposed on independent Tunisian civil society." The regime has also repeatedly cut Internet connectivity even though the subscriber pays his subscription on a regular basis. Two organizations were subjected to this. Namely: The Observatory of Freedom of Press, Publication and Creativity and the National Council of Liberties in Tunisia who used to share the same headquarter. Within 9 months in 2008, the two organizations submitted 16 complaints due to connectivity cutting. In 2008, the Ben Ali regime resorted to hacking Tunisian websites, which is a crime punishable internationally as it is an assault on a technical infrastructure outside Tunisian borders. The regime used to rely in this hacking which was targeting 15 websites and blogs simultaneously with a team of electronic mercenaries including Russian and Turkish hackers living in Tunisia and who were receiving money from the Tunisian Agency for External Communication (ATCE). Besides censorship and blocking, the regime of Ben Ali

tightened its grip on the Internet through control and tracking Internet surfers. During the elections of 2009, it resorted to surrounding the cyberspace through censorship and tracking by concentrating local cells under the supervision of the coordination committees and they took several names including:

Reference 82 - 0.08% Coverage

Despite the crackdown on freedoms, activists defending human rights worked on exploiting the cyberspace to break the censorship imposed on the public space, through the launching of several websites aimed at breaking the wall of silence imposed on abuses and violations practiced by the "machine" of despotism and tyranny. This system was based on the trilogy of political awareness, ethical awareness and technical awareness. In August 1999, the National Council of Liberties in Tunisia launched its website and forum which had become rapidly a largely popular space for discussion and debate, before being censored in a very short period after its launch. We can also mention the website "Takriz" which started to be active in 1998 to become in 2000, a large forum for young Tunisians. In 2000, a web magazine, "Kalima ", was born despite the refusal of giving it license, but it had been censored few weeks after its launching too. The number of exiled dissidents also increased in this period. Such initiatives multiplied thanks to websites of news aggregation which made their appearance such as "Tunisia News" in 2000 and "TN Blogs" in 2005. Websites represented free spaces available at the time. Internet became a space which influences reality. This period witnessed the kickoff of activism using nicknames hiding the real identities of their owners to avoid the persecution from the regime. It was a catalyst for youth activism through blogs later. The website "Tunizine" distinguished itself for being audacious by the publication of critical statements and satirical texts about the practices of the regime. It was one of the first websites which had been active in a clear defiance to the authority of the despotic state. Zouhair Yhayaoui¹⁸⁰ was the one who launched the website in 2001 until he was arrested in June 2002 in the cybercafé where he was working. He was sentenced to two years in prison for "spreading false news". He was released only in November 2003 and later died in March 2005 from the aftereffects of the torture he had been exposed to. After this experience, the website "Nawaat", which was launched in 2004, picked up the burden. It was managed by Sami Ben Gharbia¹⁸¹ who presented a testimony in the public hearing on March 11th, 2017. Later on, the battles and struggles of the youth continued through blogs to express their free opinions despite the regime control and censorship. Control intensified starting from 2005, the date of the organization of the World Summit of Information Society in Tunisia. The General, Habib Ammar, headed "the Permanent Committee charged with the organizational and logistical preparation", thus the grip had been tightened on the cyberspace. Blogs had been censored and their owners had been prosecuted and arrested.

Reference 83 - 0.04% Coverage

These files encompass several organizations, trade-unions, and political parties. These include professional unions such as the Tunisian General Labor Union (UGTT), Tunisian Order of Lawyers, Association of Tunisian Magistrates, Tunisian Union for Agriculture and Fishing (UTAP), Tunisian Union for Agricultural Engineers (ATIA), and the Tunisian Journalist Union (SNJT). TDC has also received files from human rights associations and organizations like the Tunisian League for the Defense of Human Rights (LTDH), National Council for Liberties in Tunisia (CNLT), International Association for the Support of Political Prisoners (AISPP), Tunisian Association of Democratic Women (ATFD), Association of Tunisian Women for Research and Development (AFTURD), Organization of Freedom and Equity (LE), Tunisian Organization Against Torture (OCTT), and the League of Free Tunisian Writers (LEL). Furthermore, TDC received the files of youth associations including: The General Union of Tunisian Students (UGET), The General Tunisian Union

of Students (UGTE), Tunisian Association of Young Magistrates (ATJM), Tunisian Association of Young Lawyers (ATJA), and the Union of Unemployed Graduates (UDC).

Reference 84 - 0.09% Coverage

TDC concluded from the investigation in these files that the successive despotic regimes worked on the desertification of public space and the ban of an independent associative fabric. The goal of the authority was to avoid the emergence of a civil society and an independent elite expressing views and opinions which are different to the official policy and competing with loyal elites on whom the regime relied. But under national and international pressure, the regime accepted to relatively liberate public space and gave a margin of independence to some of the organizations of the civil society as was the case in the late 1970s. Nevertheless, the goal was to surround and besiege the out-of-control organizations. It is worth noticing here that the existence of such associations doesn't mean that public freedoms flourished. Both the regimes of Bourguiba and Ben Ali exploited laws to restrict public freedoms and confiscate the freedom of formation of associations and free activity within it. They issued an arsenal of punitive laws, once transcended, you go to jail.¹⁸² Even if the 1959 Constitution text grants the right of association in its article 8 and refers to laws to determine the framework of its practice: "Citizens exercise all their rights in the forms and according to the terms provided for by law.", the article 7 allows the introduction of restrictions on them. "The exercise of these rights can be limited only by laws enacted to protect the rights of others, the respect of public order, national defense, the development of the economy and social progress." If, "Freedom of opinion, expression, the press, publication, assembly and association are guaranteed", they are, according to the expressions of the Constitution, "exercised according to the terms defined by the law." (Article 8 of the Tunisian Constitution of 1959). In line with unilateralism of political thought, the laws governing freedoms of all kinds are laws that have emptied this freedom of its substance. Indeed, when you go back to the law on associations (The law of November 7th, 1959), it becomes clear that their formation is subject to a concealed system of prior authorization/permit and gives the Minister of Interior the discretion to challenge their legal existence. It also obliges it to join one of the eight categories brought about by the April 2nd, 1992 amendment, which was put in place to domesticate the Tunisian League for the Defense of Human Rights (LTDH). Violations of its provisions are severely punishable. Indeed, it includes administrative and penal sanctions of up to five years imprisonment. This is what turned the procedure of receipt delivery from a mere administrative procedure, which the administration must hand over in exchange for filing the file, to a disguised license reality. The pretexts of refusal, if any, are limited to hollow formulas "noncompliance of the association with the requirements of the law". If we add to these provisions law No. 04 of 1969 of January 24th, 1969 on public meetings, processions, parades, demonstrations and gatherings, these legislations and practices are

¹⁸² See the part on the violations of human rights (second part).

Reference 85 - 0.05% Coverage

1. The Tunisian League for the Defense of Human Rights as an example

In the late 1970s, Tunisia witnessed a period of relative emancipation of the public space after the violent clash with the Tunisian General Labor Union in 1978, and which affected the whole society. In this context, the first independent and recognized human rights organization in Tunisia, the Tunisian League for the Defense of Human Rights (LTDH, 1977), emerged. The league received its legal permit following a compromise between Tahar Belkhodja, Minister of Interior, Hassib Ben Ammar and Beji Caid Essebsi, one of the leaders of the liberal wing stemming from the ruling party, which had been dismissed after demanding pluralism within the Socialist Destourian Party (PSD) and change of the ruling system in a

more liberal direction. This group had been dismissed following its victory in the Monastir Congress in 1971. Before that, Bourguiba cancelled its results and appointed a loyal leadership from the supporters of toughness. These developments led to the establishment of the Socialist Democrats Movement. On the other hand, the President of the United States, Jimmy Carter, who employed the philosophy of human rights as a title for his foreign policy following America's defeat in Vietnam War, played an important role in persuading Bourguiba to recognize it. The group of the Socialist Democrats (15 members) presented a license request in 1976 to constitute a human rights association but they faced refusal of the authority. So, they issued

Reference 86 - 0.11% Coverage

"Appeal for the respect of public freedoms in Tunisia" on April 12th, 1977. It was signed by more than 500 Tunisian intellectuals to condemn the continuous violations of freedoms. Hassib Ben Ammar, Abdelahy Chouikha, and Mustapha Ben Jaafar toured abroad (France, UK, USA,) to invite the personalities and organizations of the defense of human rights to attend a conference on liberties in Tunisia. Ramsey Clark, U.S Minister of Justice, came to attend it, but the conference was banned. These moves affected the regime policy. Indeed, the latter had to concede. Following negotiations, the founding group accepted the integration of 7 members belonging to the Free Destourian Party, who had applied for the establishment of a parallel human rights association at the behest of the Minister of Interior. This was the requirement of the integration of the two associations, which Taher BelKhoudja set up for the granting of the visa and which was accepted by the Hassib Ben Ammar's group. The Tunisian League was founded in May 1977. In the absence of the legal framework for the activity of the opposition parties, the league (LTDH) played the role of the space of expression and activity for dissidents, who found in it a space of coexistence for all political families: Baathists, radical left, Communist Party, Islamic Trend Movement, Islamic Left, independents, beside the presence of the Destourian family especially in the second congress in 1985. In the beginning, the Social Democrats Movement used to exercise a kind of guardianship which gradually diminished. This allowed increasing numbers of members to join the league with continuous attempts of taming from the ruling party despite the dominance of the Social Democrats by virtue of their control of memberships. Later on, the league consolidated its presence in different regions of the country and established sections in the most important governorates. Indeed, in the late 1980s its members reached 4000 persons distributed on 40 sections. The League (LTDH) played a crucial role in the documentation of human rights violations, in particular during the events of January 1978. The League (LTDH) had had a vacillating position during an armed group attack on the city of Gafsa in 1980. Indeed, its refusal to resort to political violence led it to issuing a statement of support for the execution of 13 defendants without the minimum standards of fair justice and minimum guarantees for the accused. It is worth mentioning that the league (LTDH) spaces witnessed, on this occasion, deep and rich debates and discussions about the death penalty, which helped in anchoring the universal human rights reference. Then, the debates, which resulted in issuing the League's charter, came as a turn which helped in consolidating the independence of the organization and the credibility of its decisions. On the other hand, the League (LTDH) played an important role during the "Bread events" in 1984. Kahdija Cherif, a member in the executive board, declared during a hearing in TDC (IVD) that "The League (LTDH) played a big role during the "Bread events", especially that some of its members were linked by friendship to some physicians, which had facilitated to them the investigation missions on the different events and the delimitation of the number of casualties, then drafting reports." She added, "Committees for the defense of those arrested in the events as well as other committees to counter death sentences targeting some of the detainees had been formed. The "Women" committee was one of them and it played an important role in making

Reference 87 - 0.04% Coverage

After the general elections of 1989, the regime of Ben Ali started a ferocious and widespread crackdown on the Islamic movement in mid-1991. This campaign marked a turning point in the history of the League (LTDH). Indeed, Ben Ali's regime considered the league's statements, especially those which examined and denounced dozens of deaths under torture in custody (from June 1991 to December 91), as a declaration of war on the regime. To silence the League (LTDH), the authority tried to encompass it under the cover of the law. Indeed, it started to revise the law on associations (the revision of April 2nd, 1992). The goal was to subject the League (LTDH) to a set of coercions against the independence of its decisions. These revisions included: firstly, accepting the membership of every person applying for membership¹⁸⁵ by subjecting them to a system specific to the associations of "public character". Secondly, by banning the possibility of belonging both to the leadership of the League and the leadership of political party in order to remove two members of the executive board who were categorized as radicals in their defense of human rights. These members were: Mustapha Ben Jaafar and Sihem Bensedrine. Indeed, the Minister of Interior claimed their resignation from the executive board as a compromise because of their role in documenting violations. This issue

Reference 88 - 0.09% Coverage

created a division within the executive board of the League (LTDH) between those who are biased¹⁸⁶ to the regime solution and those who are against it.¹⁸⁷ To resolve the position of the League (LTDH) as to the agreement of this sword of Damocles hanging over its independence or not, its national council met on June 13th, 1991 and resulted in a majority which refused the subjugation to the dictations of the authority, even under the cover of law, which were considered as unfair and unconstitutional.¹⁸⁸ Immediately after the vote and while the council was still in meeting, the Minister of Interior contacted the League leadership saying: "the League is now dissolved". Abdallah Kallel granted the executive board two hours before sealing their headquarters. Things went like that. The executive board decided to secure its archives in the Arab Institute of Human Rights (IADH), but it has not yet retrieved it. In 1991, Ben Ali established the High Committee for Human Rights and Fundamental Freedoms (CSDHFF) and appointed Mr. Rachid Idriss as its new president. He remained in this position until 2000. He sought to make this committee a substitute for the League (LTDH) when the grip was tightened on it and it was dissolved. The reports of the committee used to be submitted to the president of the republic and they had not been published to the public. The League (LTDH) had been dissolved for a year before the date of the United Nations Human Rights Summit, which took place in Vienna on June 14th, 1993. The cost of the dissolution of the League (LTDH) was high for the regime. Indeed, the discourse of human rights was at the heart of the political legitimacy of the regime of Ben Ali on an international level. Thus, the Tunisian participation in the United Nations summit while the League (LTDH) was dissolved was a really hard equation. This is why the regime started negotiations with the executive board to reach a compromise consisting in suspending the categorization of the League (LTDH) within the associations submitted to the law article on "general category" associations and later on issuing a fair verdict for the League (LTDH) from the administrative court as to the automatic membership. As a counterpart, the League (LTDH) committed to organize an extraordinary assembly in February 1994. The League (LTDH) accepted this solution and legally took part in the Human Rights Summit. During the preparation of the assembly, the regime resorted to "moderate" members from within the executive board to change its leadership. They succeeded in facilitating the membership of members who were loyal to the regime (1300 new members). This guaranteed the victory of a loyal team headed by Taoufik Bouderbala who accepted the congratulations of Zine Al Abidine Ben Ali. Thus, the regime succeeded in taming the League (LTDH). The salient characteristic of the new leadership had been the decline of activities and presence amidst the increasing repression and the crashing down of a leaden shroud on public space.

Reference 89 - 0.06% Coverage

Since then, the critical capacity of the League (LTDH) as a watchdog on human rights violations had been silenced. Following that, the majority of those who served Ben Ali's regime during this crisis had been self-critical or joined the ranks of human rights opposition.¹⁸⁹ The weakness of the presence of the League (LTDH) in human rights issues led to the emergence of new independent human rights organizations on the initiative of the human rights defenders who had been dismissed during the "Taming assembly", like the National Council for Liberties in Tunisia (CNLT) in 1998. Things went like this until October 2000 when the League held its fifth assembly, which was a reaction of its members to its taming. The assembly witnessed the victory of the independent current and the radical left with the election of the lawyer Mokhtar Trifi, as the head of the League, as well as the election of 4 members¹⁹⁰ from the National Council for Liberties in Tunisia (CNLT). It had also witnessed the dismissal of all the members belonging to the ruling party. This led the regime to take a series of repressive measures to neutralize the League (LTDH) following its failure in controlling it such as: permanent security surveillance targeting its headquarters, prevention of the victims and plaintiffs from reaching it, pursuing a policy of financial strangulation and banning it from receiving funds, in particular those allocated by the European Union after the state's approval. The regime resorted to a policy of judicial harassment too. To achieve this, it relied on people belonging to the Democratic Constitutional Rally (RCD) and their supporters within the League (LTDH)¹⁹¹; Thus, more than 34 judgements were issued against the League in 5 years and it was prevented from operating inside its premises. To find a compromise, the League tried to hold its sixth assembly, but it was confronted with a security ban until February 2007. Indeed, the regime "obtained" a cancellation ruling from the Tunis Court of First Instance.

Reference 90 - 0.04% Coverage

Following the stalemate that has dominated Tunisian civil society, in particular the Tunisian League for the Defense of Human Rights (LTDH) after the 1994 congress, and in the face of the intensification of the grip of the police on public space, 36 activists in the human rights field announced on December 10th, 1998 the establishment of the National Council for Liberties in Tunisia (CNLT).

Omar Mestiri says in his testimony for TDC (IVD): "The Council (CNLT) fought two battles under the regime of Ben Ali. The first one had to do with the monitoring of human rights violations and denouncing them as well as working on sensitizing public opinion to the importance of establishing a dialogue on the reform of the institutional breaches that have resulted in these violations. It is worth mentioning that the Council (CNLT) had a great impact when it published a list of the members of the security apparatus suspected in torture. The list was published in its report about "the Reality of Prisons", published on October 20th, 1999. The list was updated in the following reports (The list was officially handed over to the Ministry of Interior in February 2011). The second was the battle to prove its existence after the restriction of its activities by the ruling regime and the attempts to control it. "

Reference 91 - 0.04% Coverage

To avoid appeals which might be provided by the procedures of the submission of the documents for the formation of associations and especially handing over the submission receipt, as was the case with the National Council for Liberties in Tunisia (CNLT), authorities resorted to preventing by force the founders of the associations from access to the specialized administrative services to carry out the deposit procedures. This was repeated with several human rights associations which wanted to form independent associations in the same scenario: security forces prevent the members from reaching the governorate headquarters to

hand over the documents, by force. When they resorted to the post service to send the file, as a registered correspondence as it is allowed by law, the post services did not deliver the receipt of registered correspondence. Thus, there is no trace of the documents of an association that had completed the establishment procedures and appeals to the courts cannot be made to be used as arguments against the Ministry of Interior. This happened with the Tunis Center for the Independence of the Judiciary and the Legal Profession (2001), League of Free Tunisian Writers (2001), International Association for the Support of Political Prisoners (2002), The Tunisian Organization Against Torture (2003), Liberty and Equity Organization (2007).

Reference 92 - 0.01% Coverage

Despite these restrictions, the association succeeded in documenting human rights abuses and violations and publishing many reports about them. It also produced a documentary entitled "slow death", in which the association documented violations related to administrative surveillance facing the prisoners who have completed their sentences. It also issued a report about solitary confinement.

Reference 93 - 0.01% Coverage

The Tunisian Organization against Torture, which was established on June 26th, 2003 by a group of activists including the lawyer Mondher Cherni and the teacher Ridha Brakati and which was headed by the lawyer and human rights activist Radhia Nasraoui, the same practices to prevent it from legal activity.

Reference 94 - 0.03% Coverage

The Organization Liberty and Equity tried to deliver a file to obtain the legal visa in October 2007, under the chairmanship of Mr. Mohamed Nouri. The founding members headed to the headquarters of the governorate but security forces closed the roads close to the governorate to prevent any member from entering and presenting the establishment request. The Association implemented its activities without visa. It issued several statements documenting violations of human rights. But it had to face persecution and harassment of its members. Mohamed Nouri faced an attempt of livelihood cutting: he used to own a project of quail breeding in Soliman. But the governor issued a decision to close it and stop it from work. He lost about 350.000.000 TD besides what he had paid as combining taxes. Moreover, his son's car had been smashed. Some accusations were fabricated against him and he was sentenced to 4 years in prison. This drove him to forced migration.

Reference 95 - 0.05% Coverage

Indeed, the state had been, both under the regimes of Bourguiba and Ben Ali, the speaker on women rights. This is what we call state feminism. Under the regime of Ben Ali, it became a democratic showcase for Tunisia. Whenever he was asked about the country, he mentioned women rights and freedom. But the independent feminist movement said that there was no real equality neither effective citizenship, this is why it found itself in clash with the regime. When the Association accompanies a violence victim, it found itself in a confrontation with the state apparatuses, which were not democratic and did not respect human rights in general. We organized a campaign against violence targeting women and we printed posters. But the Ministry of Interior seized them because "there was no violence against women in our country". In the same context, the Association organized in 1993 an international conference on violence against women and we collected the proceedings in a book, which had been seized in the Ministry of Interior for 14 years". "Political violence involved all the activities of the Association and the activists of the Association

were targeted", added Ahlem Belhaj. The clashes were expressed in the form of continuous police presence, ban of normal activity, tapping phone calls of activists, cutting Internet, exposing private life ... Our life was not easy, it was a daily harassment at work, in professional hierarchy, in contests, in obtaining a passport. This authority was not ashamed. It did not respect neither death nor illness. It did not respect neither a child, nor the elderly ...they stole from me, they besieged my house, banned me from entry and exit, and harassed my children. My husband was accused in 13 cases and was imprisoned. All the family used to be harassed."

Reference 96 - 0.01% Coverage

Election rigging or electoral fraud is among the violations of human rights treated and examined by TDC (IVD). It is an abuse stated in article 8 from the law on transitional justice. TDC (IVD) received 620 files about the violation of the right to free and fair elections. Indeed, for more than half a century, Tunisian people were denied their sovereignty during the elections which the country had known since 1956. TDC (IVD) devoted a public hearing 201 to this subject:

Reference 97 - 0.01% Coverage

The 1994 elections were marked by the amendment of the electoral code and the introduction of a dose of relativity. However, it was characterized by a more closed and tense atmosphere after a campaign of arrests targeting the opposition, especially those belonging to the Islamist movement. Moreover, the Tunisian League for the Defense of Human rights (LTDH) had been dissolved in 1992.

Reference 98 - 0.01% Coverage

Ben Ali ran alone without a rival for the 1994 presidential elections, following the exclusion of all those who announced their intentions to run for the elections, namely Dr. Moncef Marzouki, President of the Tunisian League for the Defense of Human Rights (LTDH), and Lawyers Abderrahmen Heni and Fethi Triki who were sentenced to imprisonment in fabricated cases.

Reference 99 - 0.03% Coverage

Ben Ali discovered constitutional obstacles preventing him from running for a new presidential term due to the restriction of the number of terms besides the age restriction as he was 70 years old. He announced an amendment of the Constitution which included the removal of these obstacles and granted judicial immunity to the president even after the end of his duties. A first of its kind in the country, a popular referendum had been organized and the result was the approval of the amendments by 99.5% ... On behalf of a number of human rights activists, Lawyer Abdul Wahab Maatar filed an administrative case to cancel the call for a referendum for transgressing authority, but the administrative court buried the case in its closets and examined it only 9 months after the referendum. The court rejected the case for non-competence. Furthermore, the ruling party issued a law in November 2002 limiting the competence of the administrative court in the control of the ordinances issued by the Constitutional Council in order to block appeals. Abdelwaheb Maatter was subjected to harassment from the regime using different means including a malicious tax review. 204

Reference 100 - 0.01% Coverage

The human rights reports about the control of the elections revealed the extent of violations which took place. Despite the fact that article 37 of the electoral code allows the candidates to exploit public media, the duration of the allocated time and the method of appeal in dispute were not determined. This murkiness allowed the ruling regime to tighten its grip on the media landscape.

Reference 101 - 0.01% Coverage

252 Part Three; Human rights violations From 1955 to 2013
Part Three Human rights violations From 1955 to 2013

Reference 102 - 0.02% Coverage

The Tunisian legislator stipulated in Article 8 the necessity of investigating the gross human rights violations. Then, in Article 39, they entrusted this mission to the Transitional Justice Law which is required not only to investigate cases of enforced disappearances according to the reports and complaints to be submitted to them, but also to determine the fate of the victims, to collect data, to monitor the offenses, to count and document violations, in order to set a database and prepare a unified register of victims , as well as to establish the responsibilities of state agencies or other parties for the offenses of premeditated murder, rape and any other forms of sexual abuse, torture, enforced disappearance, death sentence without due fair trial.

Reference 103 - 0.01% Coverage

When the human rights violations that accompanied the exit of the French occupation out of Tunisian territory were highlighted, TDC received 1782 files of resistance fighters, including 367 women's cases, along with files proving the existence of human remains of resistance fighters in mountainous regions in the South of Tunisia.

Reference 104 - 0.02% Coverage

Article 4 recognizes the internal independence of Tunisia and the right to form a national government composed only of Tunisians, but this government is devoid of two sovereign ministries, namely defense and foreign affairs. Article 5 includes Tunisia's obligation to grant the rights of those living on its soil, as stipulated in the Universal Declaration of Human Rights and to guarantee the rights of foreigners within its domestic legislation, the freedom to dispose of their cultural, religious, economic, professional and social activities. This article also obliges Tunisia to ensure, in accordance with its traditions, equality between its citizens, whatever their origin Sex or religious belief, and to make sure they enjoy their political rights and individual freedoms adopted in Western countries.

Reference 105 - 0.02% Coverage

Immediately after the isolation of the Youssefis, the Bourguiba part, just after the Sfax Conference, began the process of liquidating them through the events of militias called the "Welfare Committees (Lijan Al-Riâaya) ," which had its headquarters at some downtown constitutional divisions, such as the Sabbat Edhalem in the old city of the capital, Zaouit Sidi Issa Marabout in Beni Khallad in the North East of Tunisia, in Hwarab, Kairouan, and in Bir Tarraz, Rades. Those militias have launched raids and arrests, accompanied by numerous human rights abuses, including kidnapping, torture and murder.

Reference 106 - 0.03% Coverage

All those who were suspected of belonging or sympathizing with the General Secretariat of the youth of the region, during and after the battles of Agri and Ghar el-Jani were imprisoned in the barracks of Tataouine in harsh conditions about which many testified of bad health conditions and lack of the basic human rights such as nutrition, water and hygiene. In addition to the investigation²³¹ under beatings and humiliation, dozens of them were stacked inside the rooms of the military barracks without a mattress or blanket. Prisoners were sprayed with insecticides²³² to combat lice and ticks. Many testimonies sited that on the day of Bourguiba's release on June 1956, the prisoners were in a state of exhaustion, hunger and collapse, which made them unable to walk. One of them stated that he had traveled between the prison and the city center by 300 meters with great difficulty and had to sit down to rest five times.

Reference 107 - 0.02% Coverage

The period of independence was characterized by frequent political movement within the framework of building a modern state at the heart of the Kingdom of Tunisia. However, the part headed by Habib Bourguiba was thinking of establishing a republican system on the ruins of the Kingdom, which was approved by the Constituent Assembly on July 25, 1957. However, the transition to the republican regime was accompanied by serious violations of the human rights of the Husainid family, especially since many of its members are in line with the constitutional movement. It should be noted that Amin Bey's position was a supporter of the independence movement.

Reference 108 - 0.01% Coverage

2.3. Serious violations of human rights

Reference 109 - 0.01% Coverage

Sabbat Edhalem The Sabbat Edhalem was known as a site of gross human rights abuses against Bourguiba's

Reference 110 - 0.03% Coverage

The grave violations of human rights suffered by Salah Ben Youssef and his assassination at the instigation and knowledge of senior officials in the state apparatus, which was supervised by the field chief Bachir Zarg El-Ayoun, head of the President's Office, the Presidential Guard Commander and parliamentary representative who asked for the help of Mohamed Ben Khalifa Mehrez and Hamida Ben Terbout to carry out the assassination, who acted under the protection of the Authority and granted effective immunity against any trace within the framework of a systematic and organized plan of the President and his close men and targeted a prominent political opponent on the meaning of the provisions of articles 3 and 8 of the primary law n°53, 201 which consists a violation at the level of international criminal law and punishable according to the provisions of the penal code.

Reference 111 - 0.01% Coverage

The conflict between Bourguiba and Ben Youssef ended with the latter being assassinated by the former. Bourguiba never hesitated to express his delight to end an era of conflict that adversely affected the course of independence. This was followed by a subsequent uniqueness of opinion and grabbing power,

and the impunity of the perpetrators led to the perpetuation of an approach based on grave violations of human rights as an answer to the opposition of

Reference 112 - 0.05% Coverage

The university space embraced bold and avangardist forms of alternative expressions. Currents evolved and built critical perspectives and opinions that competed, coexisted and created parallel organizational forms such as oratory skills that were trained in rhetoric, writing, analysis, planning and organization, and elites that subsequently influenced the course of public life. The student movement was a cradle for the emancipation from the nightmare of the Bourguibi tyranny and an early challenge to it all along his reign. It also produced innovations in the methods of mass action, which later spread within other spaces such as the trade union and human rights arena and secret political formations with multiple cultural branches. On the other hand, the Authority has sought to subject the university space to the testing and development of specialized agencies in political maneuvering, methods of abuse, prosecution, surveillance, sedition, division and formation of expertise in adapting legislation and laws to empty them from its essential principal of independence and of any every free thought. The battle for control over the professional structures of Tunisian students was the most visible expression of the confrontations between the Bourguiba authority and the student movement, which fought a long struggle to protect the independence of the Union and to preserve its away from all attempts of internalization by the ruling party. A resistance that cost its members and leaders many violations and prosecutions. At the same time, the state always tried to attract opportunistic elements of the union in order to recruit them in distortion and slander and enabled them to take advantage from public resources in order to support the organs of the regime.

Reference 113 - 0.01% Coverage

president of the Tunisian League for the Defense of Human Rights, who pursued a policy of suppressing movements in university space.

Reference 114 - 0.03% Coverage

Officially, 89 people were declared killed and 938 were declared injured, 348 of whom were members of the security forces. More than 1,000 others were arrested, some of whom were held for six months before being put on trial. Most of the demonstrators were unemployed young people, the list of arrests included as well a great number of students from different intellectual and ideological orientations. The Tunisian League for the Defense of Human Rights (LTDH) issued a report confirming that at least 92 people were killed, as a preliminary and inconclusive figure. In addition, a special commission of inquiry was established, done in accordance with Presidential Decree No. 22 of 15 January 1984, to determine the responsibilities and clarify the various motives and reasons behind what happened. This commission was chaired by Ridha Ben Ali, the Attorney General, and has presented its report on march 13, 1984, estimating the number of casualties during the clashes at 89 victims, while the number of wounded was estimated at 590 among the protesters and 348 among the security forces.

Reference 115 - 0.01% Coverage

A peaceful demonstration was held in the city center of Gafsa, on the initiative of the late Mr. Omar Thabet Gouider, head of the Human Rights League branch in Gafsa. When the demonstration reached the center of Gafsa, it was met by a significant number of police agents.

Reference 116 - 0.04% Coverage

December 10th, the anniversary of the Universal Declaration of Human Rights was chosen to ratify the Anti-Terrorism Law, although it contains chapters that contradict human rights principles and norms. The ratification of the Anti-Terrorism Law is in compliance with Security Council Resolution 1373 of 2001, which was adopted following the terrorist attacks in the United States on Tuesday, 11 September 2001. The anti-terrorism law violates human rights by violating the principles of criminal law²⁸⁵ per se. This was illustrated by the broad definition of terrorist crime that led to the broader application of the anti-terrorism law and criminalized acts such as "disturbing public order" that was used to prosecute political opponents or human rights activists and anyone suspected of sympathizing with the opposition, despite the absence of any evidence of their connection to terrorism.²⁸⁶

Martin Scheinin, the former UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms in the context of countering terrorism, emphasized in his report²⁸⁷ that the 2003 Anti-Terrorism Law "did not give Tunisians greater security but was widely used as a tool to suppress all forms of political opposition."

Reference 117 - 0.01% Coverage

287 Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Mr. Martin Scheinin <http://hrlibrary.umn.edu/arabic/AR-HRC/AHRC13-127.pdf>

Reference 118 - 0.02% Coverage

Security restrictions continued to this day on all those who have been tried under the Terrorism Act, even if they benefited from a general amnesty, according to the S17 border procedure, as the state has taken border control measures, known as "S17". This procedure is implemented arbitrary and in violation of the Constitution and international human rights treaties, as the Ministry of Interior does not need to obtain a court order or the consent of the Attorney before issuing this procedure. It does not disclose the criteria for issuing it, and does not provide the concerned person with written evidence or a justification for issuing it, which does not allow to challenge it before the courts, and that has opened the way for its arbitrary application.

Reference 119 - 0.02% Coverage

In his report presented to the HR council in December 2009, Martin Scheinin, the former United Nations Special Rapporteur on human rights and counter terrorism, stressed that "The Special Rapporteur recommends again that any interference with the right to privacy, family, home or correspondence should be authorized by provisions of law that are publicly accessible, particularly precise and proportionate to the security threat, and offer effective guarantees against abuse. States should ensure that the competent authorities apply less intrusive investigation methods if such methods enable a terrorist offence to be detected, prevented or prosecuted with adequate effectiveness. Decision-making authority should be structured so that the greater the invasion of privacy, the higher the level of authorization needed." (§ 60)

Reference 120 - 0.02% Coverage

As a result of the intensification of trade union and partisan movements, and fearing the role played by trade unionists in framing the movements, the authorities took the decision to arrest a group of trade unionists and human rights activists, including Attia Athmouni, who was arrested on the evening of December 28, 2010 and deposited in the National Security station of Sidi Bouzid, where he was physically and verbally assaulted. A search warrant was also issued against Monji Ghenimi and another group of human rights activists.²⁹⁶

Reference 121 - 0.02% Coverage

As a result of the acceleration and spread of events, Ben Ali was forced on 28 December 2010 to address a speech to the Tunisian people, establishing the conviction of all security leaders and officers that they are required to carry out the mission of repressing the demonstrators (describing them as law-breakers, and masked terrorists) "in a firm way". He deliberately instigated to target them without restriction, granting security forces a license to kill, which encouraged these latter to carry out his directives as they were convinced that they would, as always, be free from prosecution and disciplinary blame, as was the case in all previous human rights violations.

Reference 122 - 0.01% Coverage

Following investigation, TDC found that the grave human rights violations suffered by victims between 17 December 2010 and 14 January 2011 by the internal security forces belonging to the Ministry of Interior's were not isolated, but were part of a systematic and organized operational plan to quell the protests that has become a serious threat to the governing authority.

Reference 123 - 0.02% Coverage

The Truth and Dignity Commission investigated the files of the Buckshot events and listened to the victims who submitted their files. It also heard the witnesses who did not submit the files. Additionally, TDC reviewed the report of the "Independent Commission on Buckshot Events" and the report of the Office of the High Commissioner for Human Rights. However, TDC was not able to access the report of the Ministry of the Interior Affairs related to the events despite the numerous correspondences addressed to the Ministry for the purpose ...

Reference 124 - 0.01% Coverage

The Truth and Dignity Commission received 14057 files of women victims, representing 23% of the total files of victims of human rights violations that have reached TDC. These files covered all age groups and all periods of time, as well as all regions of the country.³⁷⁸

Reference 125 - 0.01% Coverage

In cooperation with UN-Women, TDC conducted a field research³⁸¹ on the impact of human rights violations on the families of political dissidents for the period from 1956 to 2013. The research relied on the UN-Women database and victims who reported to UN-Women during a confidential hearing. This research aims to: - Documenting the testimonies of men dissidents who were victims of human rights violations.

Reference 126 - 0.01% Coverage

- Identifying the impacts of pressure, changes and separations generated by human rights violations within marital relations and their impact on children. - Providing a good understanding of the interrelated impacts between the context of human rights violations and gender relations. - Understanding the ability of women and men to confront repression and to rebuild oneself despite the damage caused

Reference 127 - 0.03% Coverage

The hypothesis of the first remarks is that human rights violations in all their forms have the sole purpose of not only stripping the victim of all his rights but also breaking all the linkages that form his or her identity as an individual, such as marital bonds, bonds with the children, bonds with the parents and the rest of the family. It includes the social and professional environment, and the others in general. This means ultimately the marginalization and destruction of the individual, not only in his identity as a citizen but also as a human being. In order to extract information, and to humiliate and destroy the will to confront the arbitrary state violence, the marital relationship is used as a tool by separating spouses and by putting pressure to force them to divorce through the use of torture and sexual assaults against one or both spouses.

Reference 128 - 0.01% Coverage

In the framework of immediate care, 52 victims were directed to the Nebras Institute after signing a partnership protocol with the Institute on April 30, 2018. TDC added then two lists of 114 victims of grave human rights violations for evaluation and treatment. "The clinical assessment shows that the average beneficiaries have high scores in the rating scales of post-traumatic stress, anxiety and depression, requiring special attention," according to a report of the Nebras Institute.

Reference 129 - 0.01% Coverage

For Ben Ali's regime, the promulgation of Law No. 75 of December 10, 2003 regarding the fight against terrorism³⁸⁷ represented an important source of proactive and extraordinary measures to further crack down on human rights activists, politicians, and social media users on the pretext of security and fighting terrorism³⁸⁸. The prosecutions included the wives of the victims of this law and some female student activists from various Tunisian universities.

Reference 130 - 0.01% Coverage

TDC referred a number of indictments to the specialized criminal chambers in which 68 women were victims of grave violations. TDC also referred several referral decisions to specialized criminal chambers, including the names of hundreds of women victims of human rights violations and financial corruption.

Reference 131 - 0.02% Coverage

This scourge has eroded the Tunisian society for decades, as corruption has proliferated to the top of the state's hierarchy during the reign of Sadok Bey and Mustafa Khaznadar. This was the major cause of the loss of national sovereignty and French occupation in the late nineteenth century. Indeed, the state was relying on increased tax pressure and human rights violations in order to deal with its inability to respond to his society's entitlements, such was the case during the revolution led by Ali Ben Ghdahem.

Reference 132 - 0.02% Coverage

Drawing upon the results of its work, TDC noted a strong correlation between human rights violations and financial abuses, through the will of authoritarian regimes to seek for privileges and material benefit, or caused by a prevalence of corruption arising from unequal distribution of wealth, increased taxation, and attempts to silence dissident voices. Financial crimes are therefore considered as the center of gravity of the violations covered by Transitional Justice, as they represent its most important cause, and a tool for sanctioning its perpetrators.

Reference 133 - 0.01% Coverage

Chapter Two Correlation between financial corruption and human rights violations

Reference 134 - 0.02% Coverage

Based on the results of the various TDC works, we have noted that all economic, political, or human rights violations have resulted in financial crimes through the quest of people close to authoritarian regimes for material privileges and benefits, or have been caused by the proliferation of financial corruption due to unfair wealth distribution and increased tax pressure. Financial crimes are therefore at the heart of the violations that are covered by transitional justice, as it represents its predominant cause, and a means of rewarding its perpetrators. On this basis, studying the phenomenon of financial corruption, identifying its causes, how it develops and its legal and financial complexities, and providing legislative and procedural proposals would have a positive impact on reducing other abuses and human rights violations.

Reference 135 - 0.03% Coverage

The Commission has started mapping the national and international legislative texts and judicial decisions related to this field. Then it has proceeded with monitoring and assessing the measures that have been taken in favor of the victims prior to TDC's work, and reviewing the comparative experiences and their outcomes. It has finally started processing and studying the files that have been submitted to it, collecting the data required for reparation, and monitoring the impact of violations, the causes and the deficiencies of human rights preservation. Simultaneously, the Commission has started conducting studies and collecting data that were considered able to foster the effectiveness and the acceptability of the Comprehensive Reparation Program. TDC has then started mapping the distribution and the quality of healthcare, social and legal services on national territory, either provided by State bodies or civil society.

Reference 136 - 0.01% Coverage

1.1. The Financial Forms of Reparation for Victims of Human Rights Violations

Reference 137 - 0.01% Coverage

Financial compensation for material and moral prejudices shall benefit to physical persons, meaning individuals, victims of human rights violation.

Reference 138 - 0.04% Coverage

3. Non-Financial Forms of Reparation for Victims of Human Rights Violations Integration and Reintegration:

The integration and reintegration mechanism falls within the comprehensive reparation approach for other individual damages, considering the importance of the right to work in providing financial autonomy and preserving the dignity of individuals. It's a mechanism whereby victims who have been subject to deprivation from resources and all forms of violation of the right to work will benefit from the integration and reintegration program. Victims will be integrated and reintegrated as follows: Victims of human rights violations who have been subject to infringement of right to access to employment resulting in a deprivation from a source of income will be enabled to choose one of the following options:

- Benefiting from a capital, depending on the amount of compensation.
- Benefiting from a monthly allowance with a value not less than two times the minimum wage. The allowance will be disbursed initially by the Fund for the Dignity and Rehabilitation of Victims of Tyranny and afterwards disbursed by the National Social Security Fund (in the same way as the Law No.9 of 1974).

Reference 139 - 0.01% Coverage

- Acknowledge and recognize the responsibility of the State in confirmed human rights violations by State organs, groups or individuals acting on behalf or under the protection of the State, and apologize for that.

Reference 140 - 0.01% Coverage

- Provide training for law enforcement agents in human rights and Republican security values.

Reference 141 - 0.06% Coverage

In numerous submitted files, TDC noted that some judges were implementing the orders of the political authority, which intervened to influence the course of some trials. However, article 65 of the Constitution of the Republic of Tunisia of June 1, 1959 stipulates that "the judges are independent and subject to no authority other than the law." Interference in the judiciary is considered as a breach of fair trial guarantees, it has affected the judiciary's ability to tackle grave human rights violations. TDC indicates improvements in the field of justice after the Revolution, especially with the ratification of the new Constitution of the Republic of Tunisia of January 26th 2014 that has emphasized the independence of the judiciary by the creation of the Supreme Council of the Judiciary. The judiciary plays an important role in protecting the fundamental rights of individuals and communities and in guaranteeing public freedoms. Then restoring trust in judiciary and in its effectiveness will contribute to guarantee non-recurrence of grave violations, to restore trust in state institutions and rule of law, and to build genuine reconciliation. Article 20 of the constitution of January 26, 2014 explicitly specifies that "treaties that have been approved and ratified by the Parliament are standing above law and are below the Constitution". Yet, treaties are invoked by Tunisian courts only in rare cases. Therefore, TDC requests the State to take all measures that facilitates treaties implementation by national authorities, including courts and judicial bodies, and specifically recommends to:

- Work on reducing the time limits of litigation while respecting fair trial guarantees.
- Consolidate the principle of immunity against suspension as a fundamental guarantee for the independence of judges, while respecting the competence of the Supreme Council of the Judiciary regarding discipline, promotion and movement of judges, as guaranteed by law.

Reference 142 - 0.01% Coverage

- Provide a specialized training for judges and magistrates in the implementation of human rights conventions that have been ratified by the Republic of Tunisia.

Reference 143 - 0.01% Coverage

The reintegration of victims of human rights violations into society requires the presence of coherent and successive mechanisms that supports their psycho-social and social rehabilitation. The main mechanism is probably the one that restores civil and political rights, and without which it could be difficult to access to employment or, in some cases, to exercise civil rights such as signing contracts, or to exercise political rights such as right to vote or standing for election.

Reference 144 - 0.01% Coverage

Decree No. 1 of 2011 on general amnesty has given amnesty to a number of victims of human rights violations. TDC has observed that many have not fully recovered their civil and political rights.

Reference 145 - 0.01% Coverage

Pursuant to Article 13 (1) of the Universal Declaration of Human Rights, " Everyone has the right to freedom of movement and residence within the borders of each state." Article 13 (2) further declares that "Everyone has the right to leave any country, including his own, and to return to his country."

Reference 146 - 0.01% Coverage

- Develop an education curriculum that trains children and pupils on the fundamentals of coexistence, and instills a sense of citizenship and the human rights values.

Reference 147 - 0.05% Coverage

to non-discrimination and the right to freedom of expression should be fully reflected in laws, policies and practices as mutually reinforcing human rights. The phenomenon of racial discrimination and violence against the different other, especially those of black or brown skin, is still rooted in the Tunisian popular imagination and in the daily discourse. There must be an intellectual revolution that breaks down what has been deeply rooted in the collective consciousness, and endeavors to get rid of racism sequels that has long been entrenched in society. Black women are subjected to multiple forms of double-discrimination based on gender and skin color, through the social division of labor. They are as well subject to economic-racial discrimination as they suffer from social injustice, since society begins to provide its values, culture and social hierarchy including a kind of discrimination based on color or gender, which affects the principle of equal opportunities in employment. They are usually employed in precarious agricultural jobs or as domestic helpers, in addition to the very marginal proportion of black women with senior positions in institutions. This is also reflected in politics, where we observed how black citizens in general and women in particular were excluded from the successive parliaments over the past decades. Therefore, TDC recommends that the State should do the following: • Tackle and fight against hate speech and ideas or theories of superiority, racial superiority or hatred.

Reference 148 - 0.01% Coverage

- Curricula, textbooks and educational materials should inform and address human rights issues and seek to promote mutual respect and tolerance between citizens.

Reference 149 - 0.05% Coverage

The democratic transition is aspiring to create a change that goes beyond revealing of truth and recognizing past violations, and to establish a more comprehensive and in-depth structural programs aiming at achieving national reconciliation and ensuring non-recurrence of violations and operating a transition from tyranny to a new democracy that guarantees freedom, realizes dignity and contributes to the consecration Human Rights System. In order to be in line with these features, the State must accelerate the establishment of a new developmental model requiring the alternative to enshrine the independence of national decision and operating in harmony with the popular aspirations in order to ensure national dignity, within the framework of a comprehensive vision of sustainable development that guarantees the socio-economic rights for all Tunisians in employment, food, adequate housing, healthcare, social security and quality education ... while contributing to develop national wealth through optimal exploitation of all material and human potential, equitable distribution of wealth, rational exploitation of natural resources, and preservation of environment. These efforts should be made in order to achieve social justice, eliminate regional disparities, and enshrine the principles of equity between individuals and regions. As well, this developmental model requires to be reflective of the revolution and its causes and to achieve its objectives, therefore it must address the problem of unemployment as an absolute priority.

Reference 150 - 0.01% Coverage

- Turn the Gaafour police station in which Nabil Barakati was tortured to death into a premises for active human rights associations in the region, as his brother has promised to offer books belonging to his family to turn a section of this place into library for the region's youth.

Reference 151 - 0.04% Coverage

In this context, and in order to consolidate the current reforms and to acquire non-recurrence guarantees to political, economic, social, cultural and environmental human rights violations which have affected the victimized areas, and in order to rehabilitate those who have suffered systematic exclusion and marginalization, Raising awareness among all inhabitants about their active role of participating in local governance and decision-making. Reinforcing civil society's role in encouraging and cultivating the culture of participatory democracy as a bridge connecting public and local officials so as to elaborate mechanisms to solicit the citizens' views and their basic needs as well as to inform the local officials through counseling, municipal meetings or filling forms. Making training obligatory for members of the elected councils of local communities in resources management based on the principles of good and open governance. Allocating local councils, especially those in marginalized regions, the necessary technical and financial resources to enable them performing their tasks more effectively and efficiently in order to facilitate the development of marginalized regions and to catch up with the luckiest regions and become part of an inclusive and sustainable developmental vision free of discrimination in the context of implementing positive discrimination.

Reference 152 - 0.03% Coverage

2.1. Human Rights Commission's role in establishing non-recurrence guarantees.

Article 128 of the constitution provides: Human Rights Commission “watches respect for liberties and human rights and works to promote them and suggests what it deems developing the human rights system and is consulted imperatively in its area of competence...” as also stipulated by article 6 of the organic law N° 51 dated 29/10/2018 regarding the Human Rights Commission, which affirms the indivisibility of rights and liberties undertaken entrusted to the Commission whether these rights are political and civic or economic, social, cultural, environmental and developmental.

This means that the social, economic, cultural, environmental and developmental rights that were violated in these regions due to systematic marginalization and exclusion are part of the Human Rights Commission’s vision, in addition to political and civic rights which are under its watch.

Reference 153 - 0.02% Coverage

On this basis, the Human Rights Commission can commit itself to the surveillance of the follow-up to the recommendations given by the Truth and Dignity Commission on the reparation for damage in the regions that suffered a lasting systematic marginalization and exclusion due to the violation of their economic, social, cultural and environmental rights. Especially that this Commission has been given a legal power to make an extensive surveillance over the extent to which rights and liberties were respected and protected. This happens through a set of surveillance mechanisms which can guarantee the non-recurrence of human rights violation.

Reference 154 - 0.10% Coverage

After the independence, women’s role was overlooked and they were not rehabilitated or commemorated for their struggle. In fact, Tunisian women contributed to the National Movement to fend off colonization and were in the front row, side to side with men. They also played a role in providing food and weapon supplies and in offering shelter and hideaway. Some of them were arrested, persecuted and even raped, but after the formation of the nation, their role diminished because of restrictions forced on human rights activists, unionists and political opponents. More than 400 female prisoners were incarcerated under Ben Ali’s regime. Just like their fellow male activists, women suffered endless abuses and violations because of their background as political and human rights advocates. They have also been subject to various forms of abuse like night raids, arbitrary detentions, torture in police offices, prevention from employment, as well as administrative stalking and harassment... as we have found out later through our secret in-camera hearings that the number of women who have undergone grave and systematic violations throughout the period from July 1955 to December 2013 and who have deposited their files to the Truth and Dignity Commission are estimated to 16634 files. Most of the times, women were subject to all sorts of sexual violence; disrobing, molesting, by putting women and men in the same detention centers or by being sexually harassed by police officers touching their private parts or by rape threats and attempts. Some women also get raped privately or before one of their relatives. Most women affirmed that police officers focus more on using sexual violence and verbal violence based on a social kind like insulting, mocking their appearance and bodies, humiliating, threatening, denigration and other deeds and words that debase and degrade women’s humanity as an attempt to control and terrorize them. It is also important to mention that there are testimonies that confirm the sexual harassment undergone by women as well as rape and rape attempts, however, some of these women did not have enough courage to deposit their files to TDC or to speak up about these abuses during the secret in-camera hearings due to social and psychological reasons. Women have also suffered economic violence through constant stalking and pressure coming from police officers, employers or people working under the government’s protection. They were denied jobs, had their work tools confiscated or had their businesses shut down through financial, administrative, and legislative corruption. Their financial possessions were also seized because of

their political affiliation. Political violence was also practiced on women to prevent them from participating in political, associative and partisan activity. In addition, some women who took part in political parties, civil rights or student or associative organizations and unions have suffered campaigns of distortion, and reputation assassination through rumors about their honor and morals. Therefore, like men, women were also victims of grave systematic human rights abuses in Tunisia. However, in most cases the regime targeted women on the ground that one of their relatives was a political opponent. Actually, most of these mothers, daughters and sisters did not have any political affiliation and were not aware of the political activities in which their

Reference 155 - 0.07% Coverage

The parallel and constant marginalization of women, especially in rural areas, represents a big challenge facing the reparation for damage. The latter becomes unable to counter violations and the extensive social discrimination which can hinder the effectiveness of these rehabilitations and rid reparations of their compensating and reconciliatory purposes. Reparatory collective solutions are considered as one of the possible means to fight the structural, institutional and societal discrimination inflicted upon women. For the goal is to reduce the disregard and the exclusion and also to reduce the inadequacy in fulfilling social, economic, health, educational needs and in achieving a reasonable living standard. And since TDC is knowledgeable of the measures taken by the government, like adopting the Organic Law No 58 against violence against women dated 11 August 2017 and the efforts made to improve representation of women in the judicial sector, in the legislative bodies and in the public service. Despite all these measures, women are still seen as less competent, so they don't get appointed head of the ministry of Defense, the Ministry of the Interior or the important cabinet posts or crucial senior levels. They are still less lucky in accessing the labor market because of the strengthening of gender stereotypes and professional discrimination resulting from numerous provisions that aimed initially at reconciling between work life and family. TDC also points out the disparity in wages between men and women in the private sector as well as the problem of women's unremunerated work in the agricultural sector. Despite the fact that Tunisia signed most of the international conventions and covenants about human rights and socio-economic rights as well as "CEDAW" which compels it to defend working women and protect her from all forms of exploitation, marginalization, exclusion and discrimination, reality refutes that and proves the State's disregard to meeting its commitment towards working women; it overlooks the violations registered against them during work or by colluding in violating their professional rights in cases of unfair dismissal due to a sudden shutting down of some enterprises or in case of "legal" termination of contracts under the pretext of operational flexibility⁴¹³. While studying the files, we figured out that the political

Reference 156 - 0.03% Coverage

As International Human Rights Law imposes standards of equal protection and nondiscrimination, the Universal Declaration of Human Rights provides in article 7 that "All people are equal before the law and are entitled without any discrimination to equal protection of the law." Also, the principle of non-discrimination is clearly provided in most of "specialized" Human Rights conventions. As a matter of fact, article 1 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) defines the term "discrimination against women" as any distinction, exclusion or restriction on the basis of gender. Since the Tunisian Republic has withdrawn all reservations made in the law of 1985 regarding the ratification of CEDAW in 2011, and as this convention compels the State to implement the concept of gender equality in its legislation and to repeal all discriminatory provisions in its laws. Thus, the State has to review its legislation in order to guarantee effective equality between men and women which stands as recognition of an essential component of society and the role it plays.

Reference 157 - 0.01% Coverage

psychologists, and name these centers after women who have suffered human rights violations, and create such centers in less fortunate areas in terms of healthcare. Give priority in social security programs to poor families and single mothers. Involve women's associations in decision-making related to women so that victims receive justice.

Reference 158 - 0.05% Coverage

These women are also exposed to climatic conditions: cold, precipitations, heat especially while harvesting the greenhouses in summer season, in addition to the bad conditions of moving through the thorny and muddy fields in winter. This can cause different health complications (arthritis, osteoporosis, dermatitis, and sometimes abortion due to carrying heavy produce)⁴¹⁷. Work conditions of women in the industrial sector especially in textile, food industry and manufacturing are no less dangerous than those of the agricultural sector. They are subject to a systematic and codified violence from the decision makers from all the levels of this sector. The adoption of all principles of the free market resulted in a stockpile of laws and legislations with view to ease the exploitation of the female workforce by codifying forms of vulnerable employment resulted in violations of female workers' rights due to arbitrary dismissal and their inability to regain their rights. Despite the fact that Tunisia has ratified most of the international conventions and covenants about human rights and social and economic rights as well as CEDAW which compels to engage in defending working women and protecting it from all forms of exploitation, marginalization, exclusion and discrimination, reality refutes this and proves the State's disregard to fulfill its commitments towards working women. The State overlooks the violations recorded through work or even by colluding in violating their professional rights in cases of unfair dismissal due

Reference 159 - 0.01% Coverage

In fact, the reintegration of human rights violation victims suffering from disability back into society requires the multiplication and gathering of various mechanisms that support their

Reference 160 - 0.01% Coverage

Prepare and set awareness campaigns and educational programs addressed to different social groups, including families, on women with disability to enhance respect for their human rights and preserve their dignity and ensure fighting stereotypes and all forms of prejudice and hurtful behavior as well as help gain awareness of their potential and contributions.

Reference 161 - 0.01% Coverage

Put extra efforts into training the law enforcement personnel on child human rights, and take additional steps to guarantee the preservation of their rights.

Reference 162 - 0.08% Coverage

helping them overcome their daily hardships caused by their old age, as well as helping them get to know their rights and provide the necessary aid for them besides fighting all forms of family and social discrimination and exclusion. Despite this law, the provisions of which ensure a protectionist approach for

the elderly by establishing a set of rights whether for those in nursing houses or living with their families, in reality, it is still formal and its application has been limited. In addition, the rights of the elderly did not get enough definition and even the elderly themselves are somehow unaware of their rights and of the parts they can go to in time of need. We can say that they have been used to marketing a certain image. Practically, there was no real will to protect the elderly who need care. In addition there is a lack in studies made on the elderly and an absence of older-people regional delegates who can be informed about what this group of people goes through and endures. While dealing with the files and hearing sessions of victims of systematic and grave violations, TDC noticed that the ruling regimes from 1955 did not take into consideration the age of the people they were oppressing. Therefore, older people suffered, just like the others, political oppression and physical and material harm. In fact, they would be violated when one or all their sons are arrested which deprives them of their care-giver and provider, in addition to the difficulty of transporting to prisons and also house raids and summoning to police offices. In addition to the financial pressures exercised on these families which can lead sometimes to breaking down the family and creating a feeling of a burden for the elderly which can seriously damage their psyche. The National consultation on the comprehensive program of reparation for damage for human rights violations victims, which was also undertaken by TDC have shown that 23.38% of people above 60 years old who were victims did not have a social security, and 50.27% of them had no health insurance. This program has also shown that 16.19% of the elderly were renting and 10% were living out of favor. It also demonstrated that 41.41% of the elderly were still providing for their children who were still studying. On another level, the program has shown that 78.97% of the actual elderly have suffered harm caused by inflicted violations and that 82.06% have suffered physical damages, 77.91% have chronic illnesses and 38.06% suffered physical loss. 79.49% have psychological damage. Meanwhile, 43.04% of the elderly expressed their dissatisfaction with the measures taken for them since 2011.

Reference 163 - 0.07% Coverage

as having no retirement pension or a stable income or a provider can make them unable to provide for themselves. Therefore, they must enjoy social aids. The third right is about the elderly's position to the other which can result in some damage. In these cases, the penal code and the Consumer Protection Law should intervene to stand against the exploitation of the elderly's physical and mental weak capacity. The penal code should also allow for the arrest or restraint of those accused of material and sexual assault on the elderly considering the victim's age enough reason to do it. In addition to that, the victim's age should be considered as a risk assessment criterion and a standard to the extent of the punishment and to aggravate the punishment in case the accused is a law enforcement employee. On the fourth level of protection, the obligation to report the mistreatment that weak persons go through, among which are the elderly, especially from the part of medical and social care personnel and prison officers and State agents since non-disclosure policy as well as their professional secrecy may not allow them to do that. These considerations should be annulled in the face of their responsibility to protect these vulnerable groups. While the fifth level is concerned with health-care, for the elderly require a special type of medical care regarding their special health needs because of their age, which pushed towards the advent of gerontology. This specialty should be provided in most of health institutions and efforts should be made to train the medical and paramedical to acquire enough skills to deal with the elderly. Based on the comprehensiveness of the reparation program, TDC worked on the ways to ensure reparation whether at the individual level or the collective one in order to extend the number of beneficiaries and establish a culture of human rights and immortalize collective memory. TDC also recites the importance of reparation of damage on all levels for it is a complete and comprehensive aiming at restoring the feeling of social belonging, rebuilding trust in the State's institutions, reconstituting national identity with respect to

cultural diversity and reformulating collective memory especially to achieve reconciliation and rebuild the societal network.

Reference 164 - 0.01% Coverage

In this context, TDC considered thinking of other ways and forms of reparation for damage combining the collective and the individual in a way that guarantees reaching more beneficiaries, achieves sustainable development, contributes to the establishment of Human Rights, and immortalizes collective memory. This has incited us to propose a range of joint recommendations for reparation of damage mostly revolving around:

Reference 165 - 0.01% Coverage

Create 3 centers to rehabilitate victims of Human Rights violations in three regions lacking health-care services.

Reference 166 - 0.01% Coverage

Provide medical, psychological and social as well as legal services in order to rehabilitate victims of human rights violations in the context of the Law of Transitional Justice. Make free field visits via mobile units for people who cannot go to these centers.

Reference 167 - 0.05% Coverage

Reparation of damage usually consists of compensations relating to what happened in the past. It is true that compensation has an important role in reparation which is considered the most relevant aspect of the mechanisms of transitional justice for the victim, yet reparation transcends compensation. More specifically, the importance of reparation consists of the efforts made to repair the damage inflicted upon the victims throughout several mechanisms namely, reintegration to assure stability and pulling them out of the crucible of victimization to the effective implementation of human rights and equal citizenship. However, reparation is not only about repairing past damages. It plays a role in constructing a society of post dictatorship, corruption, struggles, violations and marginalization generated by that regime. Reparation aims at reinforcing reconciliatory initiatives and eventually at paving the way for peaceful coexistence requisites. Reparation, on the individual and collective level, plays an important role in rebuilding trust between the State and the victims by implementing rights and a culture of citizenship and guarantees of non-recurrence of the past tragedies. This proves that reparation is not just an outcome and it is not about the past, it is rather an effort that puts the bedrock for a real reconciliation and for a sustainable social peace via the implementation of Human Rights as a universal principle that is indivisible and vital to ensure a culture of citizenship, the right to be different and preserve human dignity. This helps enriching societies for it is crucial to attain an intellectual and creative advancement and it is the bedrock of societal progress.

Reference 168 - 0.02% Coverage

Despite all of this, in order to really guarantee the non-recurrence of past tragedies and build a new type of society, we have to think of the primary reasons of violence and discrimination since aiming at building a new sociological approach has to necessarily go through the reformation of education. This can help raise a new generation based on values of respect, democracy, and Human Rights. Investing in our

children can be the best non-recurrence guarantee of the painful past, the consolidator of trust, and a guarantee of a better future for our nation.

Reference 169 - 0.01% Coverage

- Carry out activities and events aimed at preserving the national memory of the victims of violations and disseminating the values of tolerance, citizenship, the respect of human rights and non-violence.

Reference 170 - 0.08% Coverage

Often, the file content is missing, but we happen to find the folder content, which consists in mentioning only a range of folders through the upper and lower numbers, and stating a general theme that combines all those folders. For instance, we may find in the box of the folder number the expression "from 6,902 to 7,143". Similarly, we may find in the box of the file content, general information that reflect neither the content of the folder, nor the content of the file⁴⁴², in complete violation of the rules of scientific management of documents and archives. That being so, this inventory ensures neither data accuracy nor compliance with the international standards for archival description relating to human rights violations. Hence, it was difficult for TDC to access archives and obtain information.

The National Archives maintain and gather important stocks of documents that, if provided, could have facilitated TDC's work. However, this was not the case throughout the term of TDC, as the General manager of this institution deviated from neutrality on several occasions, and took part in TDC's fight against its opponents. He signed two petitions in favor of history specialists who reproached TDC's call for reviewing the history of the State of Independence through the prism of human rights violations.⁴⁴³ He even took a pro-presidential stance during the negotiations against the transfer of Presidential Archives on violations to the National Archives. Throughout the negotiations, he did not even ask to implement the convention concluded between the National Archives and the Presidency of the Republic, which states that the archives of Bourguiba's era should be transferred to the National Archives.

As of December 2015, he had not made any efforts to implement a scientific management system for presidential documents and archives, especially with regard to the archives of violations. The latter contain evidence of gross human rights violations that can be useful for truth seeking, the right to know, holding perpetrators accountable and providing reparations for victims.

He was supposed to support the National Archives' request for information that would help identify persons who had held important positions and might have contributed to human rights violations. This information could have, also, clarified the events that gave rise to human rights violations, or helped find out the fate of missing persons.

⁴⁴² See page 283 of the Inventory of the Presidential Archives, store number 1, first registry, July 2016.

⁴⁴³ See the statement made by 60 specialists in history on 9 April 2017, in response to the President of TDC's call for reviewing the State history through the prism of human rights violations, and a second statement on 20 March 2018 after TDC published archival documents unknown to the public opinion.

Reference 171 - 0.03% Coverage

Circumstances in prison respected neither the norms for the treatment of prisoners set out in the United Nations Standard Minimum Rules for the Treatment of Prisoners, nor those stipulated in the Rules of Procedure of Tunisian prisons. When reports of protest and denunciation of conditions at the Prison of 9 Avril abounded by politicians and human rights defenders, the Prison of Mornaguia was built and the Prison of 9 Avril was abandoned in 2006 and completely demolished in 2009 to obliterate all traces of violations that affected different generations of prisoners who resisted French colonialism, as well as those

who resisted the oppressive regime, such as executions and death induced by torture and medical negligence.

Investigations conducted by TDC, in this regard, indicate that the prison witnessed serious human rights violations such as medical negligence that led to death, torture, rape, sexual violence and cruel, inhuman and degrading treatments. In fact, out of a sample of 12,913 victims who served a prison sentence, 5671 passed through the Prison of 9 Avril, i.e., 44%.

Reference 172 - 0.01% Coverage

This prison comprises three military fortresses in the era of the Ottoman Caliphate that turned into three prisons in which human rights violations were committed from the French colonial era until after independence.

Reference 173 - 0.01% Coverage

- The registration of these monuments by the National Heritage Institute as landmarks for gross human rights violations.

Reference 174 - 0.02% Coverage

Within the framework of a partnership between TDC and international organizations, a survey of literary and cultural initiatives including theater, cinema, poetry, painting and artistic initiatives concerned with gross human rights violations and their documentation was carried out. A survey of places that preserve memories such as schools, institutes, streets and public squares, as well as initiatives undertaken by individuals, groups or municipalities in memory of the victims of tyranny, official dates and celebrations was also carried out.

Reference 175 - 0.01% Coverage

Thereby, TDC recommends the revision of Decree-law No. 2011-97 by extending the scope of the Museum to become solely dedicated to the Revolution, the course of its events and gross human rights violations committed against victims who resisted the oppressive regime from 1955 to 2013.

Reference 176 - 0.01% Coverage

Since 2011, numerous initiatives by victims' associations have been recorded in commemoration of the victims of gross human rights violations. State organs have also undertaken a number of initiatives.

Reference 177 - 0.01% Coverage

emphasizes that memory preservation is a right for all Tunisian women and men, and after conducting two field studies, the first is a survey of art and memory initiatives, and the second is a gender-based approach on memory preservation for victims of gross human rights violations, TDC concluded that the level of attention given to the preservation of women's memory does not commensurate with the magnitude of the violations against them.

Reference 178 - 0.01% Coverage

VII. Writing and teaching the history of human rights violations⁴⁵²

Reference 179 - 0.01% Coverage

All the foregoing elements provide an objective revelation of the reality of gross human rights violations committed in the past and a rich material for history writers.

Reference 180 - 0.01% Coverage

With respect to teaching history, especially history of the National Movement and the State of Independence, personal history has dominated the overall events with a systematic and almost complete exclusion of national figures and significant linkages about the origin and development of the National Movement. Which is considered a violation of the right to know the truth about flagrant human rights violations and serious violations of human rights law.

Reference 181 - 0.01% Coverage

Overcoming racism, discrimination, exclusion, marginalization, cultures of deep fear and underlying causes of massive human rights violations requires interventions in those three spheres.

Reference 182 - 0.04% Coverage

The essential link that is shaped through all cultural expressions is the voices and recollections of the victims, i.e., their oral and narrative memories, which need to be brought out of the selfspace to the public space. In doing so, the oppressive regime will be dismantled and the system of gross human rights violations in Tunisia will be revealed. The Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, pointed out the importance of cultural activities that involve victims, "given their potential to prolong the lifetime of truth commissions' work". Most transitional justice work targets institutional changes. It is clear, however, that the transformations required to redress past and prevent future violations also call for changes in attitudes, since "These cultural initiatives have proven effective in many comparative experiences in Peru or Sierra Leone". Creating a cultural space that sustains openness, solidarity and reconciliation between individuals and groups takes us to a variety of expressive spaces, where victims get rid of the burden of their experiences by turning them into literary or artistic creative experiences, and where in-depth

Reference 183 - 0.01% Coverage

The significance of creative biography documenting gross human rights violations indicates how hard it is for the novelist to write his biography and to reflect what he has been subjected to in the realism of creative writings, which face many difficulties due to the restriction of their dissemination and their inaccessibility for the masses.

Reference 184 - 0.01% Coverage

6. The support and promotion of literary, intellectual and artistic initiatives documenting gross human rights violations in Tunisia, by State institutions concerned with cultural affairs.

Reference 185 - 0.03% Coverage

It is also able to address issues and questions considered as taboo and to create a thoughtprovoking process in the spectator's mind, encouraging critical analysis of a certain situation. In fact, not only did theater provide for an alternative means of expressing narratives in creative ways, it also had proved to be a manner in which survivors of human rights violations could exteriorize the pain that they had perhaps failed to express in an official political context. As such, theater can have an impact in bringing about social transformation, by providing grounds for victims to reconstruct their lives. Theater is a non-violent form of opposition to violence itself.

Therefore, TDC took a number of foundational initiatives relating to the theater of transitional justice, whereby young creators should perform a theater work that, from their point of view, discusses human rights violations in front of the victims. The latter can walk onto stage in front of the audience to correct or modify the content of what has been performed. Thus, victims are allowed to speak out and open up to the art audience, and are granted the necessary space to tell their stories.

Reference 186 - 0.01% Coverage

Cinematography is capable of telling stories, bringing together different views and commemorating the past. Besides its role in documenting human rights violations in artistic ways, it contributes to forging paths for reconciliation and provides a framework for discussion and dialogue, which calls for the promotion of cultural diversity and the emergence of innovative initiatives to preserve the national memory of victims of human rights violations.

Reference 187 - 0.01% Coverage

- A special fund for documents and archives should be established for cinematographic and television productions, to preserve the collective memory and to convert it into feature films and documentaries related to human rights violations.

Reference 188 - 0.02% Coverage

- Special allocations and funds should be unconditionally dedicated to the production of feature films and documentaries related to human rights violations.
- A national audiovisual archive institution should be established to compile and document all audiovisual productions made by the various public and private institutions to contribute to the production of documentaries and feature films related to human rights violations under private financing and support from the Ministry of Culture, and to recollect old documentaries and feature films documenting the Tunisian course of events to reconsider the country's history and to archive and digitize old films since the 1960s and 1970s once again, with support from the Ministry of Culture.

Reference 189 - 0.02% Coverage

- Films intended for the youth and primary and secondary school students should be produced and directed by numerous filmmakers, having different visions, to preserve the national memory. They also should be integrated into educational curricula to raise awareness among younger generations regarding their rights and duties, and should be accessible in schools and human rights and citizenship clubs in order to be anchored in young generations' minds and to firmly convince them that violations constitute a crime.

Reference 190 - 0.01% Coverage

- Laws shall be enacted to protect creative people and to enable them to access archives of human rights violations to produce documentaries for the future generations.

Reference 191 - 0.01% Coverage

- A Transitional Justice Film Festival shall be organized annually to screen nationally produced feature films related to human rights.

Reference 192 - 0.01% Coverage

What is referred to as art galleries and other cultural activities are all the different activities that make victims the center of their attention and a key theme in their works. The term also includes the participation of the various civil society actors in bringing human rights and

Reference 193 - 0.03% Coverage

transitional justice issues to the public space to fathom the human rights approach relating to the transitional process.

These activities and works, which above all represent a form of symbolic reparation and memory preservation of gross human rights violations in Tunisia, aim at bypassing this dimension to become rather a guarantee of non-repetition and a reason for changing mindsets and implementing reforms at the level of State institutions and organs, which is required to reform the past.

The importance of these artistic initiatives lies in their ability to extend the Truth and Dignity Commission's term, thereby extending its work over time to commemorate the victims who witnessed gross human rights violations, revealed and dismantled the oppressive and corrupt regime and documented it in various expressions. This is confirmed by the Special Rapporteur, Pablo de Greiff, who believes that such activities "occupy and enhance the moral space vacated in the aftermath of atrocities, and have the potential to strengthen bonds of solidarity within society – so crucial in the wake of conflicts or repression".⁴⁵⁶

Reference 194 - 0.02% Coverage

A people's knowledge of the history of their oppression is part of their heritage and must be preserved and secured by taking appropriate measures to preserve such papers, documents and other evidence relating to human rights violations, and by facilitating knowledge of these violations, for revealing the truth of violations is a right guaranteed by law to all citizens⁴⁵⁸. These measures are primarily intended to preserve the collective memory from oblivion and extinction, and, in particular, to prevent distortion or denial of facts.

Reference 195 - 0.05% Coverage

in the field of transitional justice, lies in its reliance on a novel mechanism, namely the "Arbitration and Reconciliation Commission". This leads us to address the implementation of national reconciliation at the individual level, at a first stage, and at the collective level, at a later stage. The specificity of the Tunisian experience in the area of transitional justice also lies in dealing with human rights violations and financial

corruption violations, under its mandate. Having investigated the cases entrusted to it, The Truth and Dignity Commission found a correlation between the above-mentioned two types of violations. Notwithstanding the obstacles that hampered the arbitration and reconciliation proceedings by State institutions, especially by services of the State Litigation Officer, the Truth and Dignity Commission managed, through the arbitration and reconciliation mechanism, to conclude eight conventions on arbitration and reconciliation, during which it recovered an estimated seven hundred and forty-five million dinars (745 million TND) for the Tunisian State. Through the arbitration and reconciliation mechanism, TDC also managed to regularize the situation of eleven victim of human rights violations, including two victims of property rights violations that were compensated an amount of seven hundred thousand dinars (TND 700.000).

National reconciliation and transitional justice are measures to uncover the truth, preserve national memory, establish and achieve justice, build a State of law and provide reparations while holding perpetrators of human rights violations accountable. This makes it necessary to search the scope of national reconciliation in the transitional justice process, and methods for implementing national reconciliation in the course of transitional justice.

Reference 196 - 0.01% Coverage

It follows that reconciliation aims at constructing a democratic system that cuts off with authoritarianism, and establishing equality between all citizens in various areas, which could help rebuild the citizen's confidence in State institutions, as well as holding all perpetrators of gross human rights violations accountable.

Reference 197 - 0.05% Coverage

The Moroccan experience "The Equity and Reconciliation Commission" was established at a critical and delicate stage in the process of development that Morocco went through at the beginning of the 1990s, following the political changes that were faced by the State and the political and social components of society. As an instrument of transitional justice, it was one of the fruits of this challenging historical evolution towards addressing issues and cases linked to the past gross violations of human rights. It was established pursuant to a royal decree dated 6 June 2003, ratifying the recommendation of the Advisory Council on Human Rights issued by virtue of article 7 of Dahir No. 1.00.350 reorganizing the Council. To further strengthen its autonomy, the Commission drew up its statute, which serves as a foundational document including a detailed description of the tasks entrusted to it, a definition of the violations falling within its remit, and the methods used in organizing and carrying out its work. This statute was ratified by virtue of Sherifian Dahir no. 1.04.42 issued on 19 Safar 1425, corresponding to 10 April 2004. Therefore, the Equity and Reconciliation Commission is considered a National Commission on Truth, Equity and Reconciliation with non-judicial prerogatives in settling cases of past gross human rights violations. It deals with a long period stretching from the date of Moroccan independence in 1956 until 1999. The final report of the Equity and Reconciliation Commission included a set of recommendations and suggestions in the areas of democracy, the building of a State of law and institutions, respect for human rights and the rule of law, which made the General Secretary of the United Nations refer to the Moroccan experience as one of the five

Reference 198 - 0.05% Coverage

"TRC" considered that the main and direct cause of the Peruvian internal armed conflict was "the decision of the Peruvian Communist Party-Shining Path," who is the main perpetrator of crimes and human rights

violations. It emphasized that reconciliation is unachievable without the effective practice of justice, be it in terms of providing reparations for victims, holding perpetrators accountable or ending impunity. Indeed, an ethically and politically sound nation cannot be built on the ground of impunity, especially that the most serious human rights violations, committed by military officials, included illegal executions, forced disappearance of persons, torture and cruel and inhuman treatment. "TRC" also condemned the heinous and widespread practices of sexual violence against women.

The Paraguayan experience Pursuant to article 203 of the Constitution, the Paraguayan Chamber of Deputies adopted on 19 June 2003 Act no. 2225 on the establishment of the "Truth and Justice Commission (TJC)" in Paraguay, which focused on the period from May 1954 until 19 June 2003, date of ratification of the TJC establishment Act. It was entrusted with the tasks of investigating and looking into political, social and cultural circumstances and behaviors of State organs and other structures that committed serious violations of human rights, as well as officially uncovering the truth and proving the State's moral and political responsibilities, at a later stage. It was also tasked with clarifying the link between human rights violations and authoritarian policies of the National State, developing proposals of reparations for victims on the basis of acceptable norms, and preserving victims' memories and testimonies by identifying detention locations of individuals who were victims of violations.

Reference 199 - 0.05% Coverage

The above are three of the most famous quotes of the late South African leader "Nelson Mandela", who devoted his life to the unification of his people, after the end of the apartheid era in 1994. The South African "Truth and Reconciliation Commission" was established under the Promotion of National Unity and Reconciliation Act no. 34 of 1995, one year after "Nelson Mandela" was elected President of the country in the context of democratic transition to end apartheid and white minority dominance. The Truth and Reconciliation Commission was mainly created to achieve national reconciliation between victims and perpetrators, after identifying all human rights violations. It also played a key role in restoring national unity while preserving the rights of victims of the former regime and without depriving the former ruling class from the opportunity for reintegration. The Commission was granted extensive and exceptional prerogatives to investigate patterns of human rights violations committed by officials and members of opposition organizations over a period of thirty-four years, and to make recommendations, including the provision of financial compensations for victims of human rights violations. Other quasi-judicial prerogatives consisted in granting amnesty to perpetrators under certain circumstances, as a way to bring justice, instead of bringing them to trial. The "Truth and Reconciliation Commission" brought perpetrators, from 1995 to 2000, to confess their mistakes and to ask forgiveness of people they wronged on the basis of hearing sessions, during which those involved in violence acts provided their testimonies on all the abuses committed against the other party, be it Africans or the white minority.

Reference 200 - 0.01% Coverage

It follows that the first step in the right direction towards the final, comprehensive and fair closure of the case of gross human rights violations consists in revealing their truth and describing events that took place, with a view to ending the abuses that have been committed by the State against people over decades. However, revealing the truth relates to a defined

Reference 201 - 0.01% Coverage

The aforementioned Specialized Chambers should be entrusted with adjudicating cases related to gross violations of human rights, as specified in ratified international agreements and in this law. These violations include namely the following:

Reference 202 - 0.02% Coverage

These chambers are committed also to examine the violations related to electoral fraud, financial corruption, misappropriation of public fund and forced migration for political reasons, which shall be transferred by the Truth and Dignity Commission." However, the victims of violations cannot be confronted with the prescription of a crime, the force of *res judicata* or the non-retroactivity of laws. This confirms the fact that while transitional justice seeks to address past violations to build a better future, reconciliation is unachievable without addressing the files of violations and accessing archives to reveal the truth and the identity of human rights perpetrators and holding them accountable, bearing in mind that people are eager to figure out mysteries of the past, and that they need a comprehensive justice that guarantees

Reference 203 - 0.02% Coverage

their compensation. It could, therefore, be inferred that reaching national reconciliation is possible only if preceded by the stage of accountability of corrupt people, who are responsible for financial and political corruption, and the fair trial of criminals, the restitution of victims' rights and their moral and financial reparation. Accountability also aims at ensuring the nonrepetition of violations and revealing the truth, so the new regime would not fall in arbitrariness and fail to respect human rights. Justice is not only confined to the legal dimension, but also includes symbolic and moral dimensions, such as providing rehabilitation for all the former regime's victims.

Reference 204 - 0.02% Coverage

Reconciliation is divided into individual reconciliation (arbitration) and collective reconciliation (national reconciliation). The latter is defined as a political reconciliation *par excellence*, between the State as the perpetrator of gross or systematic violations of human rights, and activists of political parties and movements, professional and human rights organizations and other victims of such violations. Reconciliation can also occur among political parties and movements themselves, as organized groups that committed violations against one another over the period from July 1955 until the end of December 2013. The Truth and Dignity Commission seeks, through the prerogatives and mechanisms that it enjoys, to realize these "objectives". It is obliged to provide, in its final report, all the measures to be taken

Reference 205 - 0.03% Coverage

to encourage national reconciliation, as well as recommendations, proposals and actions that promote democratic construction and contribute to building the rule of law. This includes the proposal to hold a broad national conference for national reconciliation between the State, on the one hand, and political parties and movements, professional and human rights organizations, on the other hand, or among political movements themselves, under which confessions and collective apologies are exchanged. This is a deferred measure in Tunisia, which has made important strides in achieving national reconciliation through the promulgation of a consensual constitution in January 2014 and holding pluralistic, democratic, genuine and transparent elections that involved all parties, including figures of the pre-14 January 2011 regime. This led to the emergence of a national coalition government and national

opposition movements, thanks to the unity of the Tunisian society religiously, ethnically, doctrinally, culturally and linguistically.

Reference 206 - 0.04% Coverage

National reconciliation can, thus, be achieved. In fact, transitional justice is not possible without achieving a successful comprehensive national reconciliation, as the desired and supreme goal of the integrated multi-track transitional justice process. The latter implies revealing the truth about gross and/ or systematic violations of human rights, achieving comprehensive national reconciliation, holding perpetrators of such violations accountable, providing reparations for the victims, implementing the arbitration mechanism with the consent of both parties, reforming institutions by screening administrations and reviewing the corrupt legislative system. These mechanisms are interdependent and cannot be overlooked or condoned under any circumstances, even in case of an emergency or a force majeure. Otherwise, it would be considered a violation of the Constitution.

The Truth and Dignity Commission's Arbitration and Reconciliation Commission is responsible for undertaking and deciding on files relating to gross human rights violations, financial corruption and misuse of public finance over the period from July 1955 until December 2013. These violations are provided for in article 8 of the Transitional Justice Law including (deliberate murder, rape or any other form of sexual violence, torture, etc), to name but a few; and in the list elaborated by the Truth and Dignity Commission (including prison,

Reference 207 - 0.02% Coverage

Recourse to transitional justice occurs in societies witnessing revolutions or wars, during which human rights crimes and violations were committed. This process, which could be extrapolated from the experiences of different states, aims at moving from an oppressive totalitarian political environment, where gross violations of human rights and fundamental freedoms occur, to an environment that is favorable for democratic exercise. It may also mean the transition from a period of prolonged armed conflict, or a political conflict punctuated by stages or periods of armed conflict, to an environment of civilian peace within the framework of peace conventions between two or more parties, depending on the nature of each State and its experience.

Reference 208 - 0.02% Coverage

Rwanda in 1994. This process culminated in the establishment of the International Criminal Court in 1998, as a permanent international body to prosecute war crimes, crimes against humanity and gross human rights violations. In a later stage, the concept of transitional justice evolved following the fall of the Eastern Bloc led by the Soviet Union and the radical changes it brought in Eastern European States. As a result, the idea of trials by judicial commissions was dropped; transitional justice became the integrated path for a set of mechanisms conducive to comprehensive national reconciliation. It was enshrined under Truth commissions or committees established in more than 30 countries from the five continents.

Reference 209 - 0.01% Coverage

The Chilean experience represents another example of impunity. In fact, after years of military rule that led to the assassination and disappearance of thousands of people and major human rights violations, before the transfer of power to civilians and following the democratization process, General Pinochet and his

associates granted themselves amnesty before handing over the power to civilians, until he was arrested in 2002 under the British judiciary.

Reference 210 - 0.02% Coverage

VII. The specific context Nowadays, Tunisia is undergoing a new phase of changes aimed at breaking with the past and moving towards a future of justice and democracy, through the transitional justice mechanism. The latter ensures the restoration of rights to those who rightfully possess them and prevents the recurrence of oppression. The transitional justice experience is the backbone of the State's transition towards a democratic regime after dictatorship. Following the overthrow of the political system responsible for gross human rights violations, there emerged a need for several urgent measures, including the amendment of restraining laws, the compensation and reparation for victims, and accountability for those responsible.

Reference 211 - 0.03% Coverage

The operationalization of the legal framework for transitional justice witnessed a clear slowdown, although the issue was raised immediately after the Revolution and was codified from the outset within the Constituent Law no. 2011-6 dated 16 December 2011 relating to the provisional organization of public authorities. Article 24 of this law states that among the tasks of the National Constituent Assembly is: "The enactment of an organic law regulating transitional justice, its foundations and its area of competence." In addition, the decree no. 2012-22 dated 19 January 2012 creating the Ministry of Human Rights and Transitional Justice and fixing its attributions entrusted it with the elaboration of an appropriate legal framework for the implementation of transitional justice. This slowness resulted in serious negative repercussions, mainly the obliteration of some means of evidence, relating to files of financial or administrative corruption; and the use of accountability and truth-seeking files, especially those brought before the courts, to put pressure on certain parties, in order to wrest concessions or obtain material or even political benefits.

Reference 212 - 0.02% Coverage

mediation, commissions of inquiry, reconciliation, the judiciary, international arbitration and all the means provided for in Chapter VI of the UN Charter relating to the Pacific Settlement of Disputes, on the one hand; and mechanisms relating to the achievement of civil peace and comprehensive reconciliation in national regimes, especially those that witnessed egregious and gross human rights violations, and then moved to a transitional phase, through the activation of transitional justice, with its various acknowledged mechanisms.

Reference 213 - 0.03% Coverage

1. Establishing the Arbitration and Reconciliation Commission Indeed, the Arbitration and Reconciliation Commission was established, organized and structured under article 25 of the Rules of Procedure of the Truth and Dignity Commission dated 22 November 2014. It started, in August 2015, accepting, processing and studying arbitration and reconciliation cases, whether relating to gross and/ or systematic human rights violations, financial corruption or misappropriation of public monies. Special hearing sessions were held for all parties, including the State Litigation Officer, representing the State in its dual capacity, whether victim or perpetrator of the violation, in implementation of the provisions stipulated in the manual of procedures of the Arbitration and Reconciliation Commission. The latter was adopted by the

Board of the Truth and Dignity Commission in July 2015 and clarified the legal and procedural framework on how to deal with the arbitration and reconciliation file, on the basis of flexibility, efficiency and speed.

Reference 214 - 0.02% Coverage

The manual of procedures of the Arbitration and Reconciliation Commission responded to the principles of speed, flexibility and accuracy due to the specificity of the processing of arbitration and reconciliation requests in the course of transitional justice and their significant number (totaling 25,998 requests relating to human rights violations, financial corruption or misappropriation of public monies). Most of the requests were brought by the victims, while the rest were submitted by perpetrators of violations. The closing date for submitting arbitration and reconciliation requests by the victims was June 15, 2016; while requests by perpetrators of violations continued to be accepted until the end of term of the Truth and Dignity Commission.

Reference 215 - 0.01% Coverage

of the violation, in accordance with the rules of justice, equity and the applicable international standards relating to gross and/ or systematic violations of human rights, stipulated under the Transitional Justice Law.

Reference 216 - 0.01% Coverage

The Arbitration and Reconciliation Commission shall undertake, among others, to consider reconciliation requests relating to violations of human rights, financial corruption and misappropriation of public monies. The latter type of arbitration and reconciliation requests shall not be subject to the extinction of the right of action until the implementation of the terms of reconciliation.

Reference 217 - 0.01% Coverage

- The total number of arbitration and reconciliation requests: 25,998 cases
- The number of arbitration and reconciliation requests relating to human rights violations: 21,177 cases

Reference 218 - 0.02% Coverage

- The number of cases submitted by the State (as a victim): 685 cases
- The number of cases submitted by the State (as a perpetrator of violations): 0 cases
- The number of cases examined by the Arbitration and Reconciliation Commission: 3,043 cases (2571 relating to human rights and 472 on financial corruption), after excluding 686 files submitted by the State as a victim.)
- The number of cases under examination by the Arbitration and Reconciliation Commission: 14 cases (01 concerns human rights and 13 concern financial corruption)
- The number of cases rejected for lack of jurisdiction: 463 cases (376 on human rights/ 87 on financial corruption)

Reference 219 - 0.01% Coverage

- The number of cases rejected by arbitrators: 2535 (2184 on human rights/ 351 on financial corruption)

Reference 220 - 0.01% Coverage

- The number of arbitration and reconciliation conventions: 19 arbitration and reconciliation conventions (06 on human rights/ 13 on financial corruption)
- The number of arbitral awards: 09 arbitral awards (07 on human rights / 02 on financial corruption)

Reference 221 - 0.01% Coverage

2. Arbitral Decisions relating to human rights violations • The Truth and Dignity Commission managed to regularize the status of eleven victims of human rights violations, including two victims of a violation of property rights, who were compensated in an amount of seven hundred thousand dinars (700,000TND), distributed as follows:

Reference 222 - 0.02% Coverage

The widespread human rights violations and oppressive practices of dictatorships made it necessary for many states to take action against perpetrators of violations and to hold them accountable, in order to bring justice and provide redress for the victims. Efforts should also be made to try to provide direct compensation for many victims who suffered damage and to make perpetrators of violations acknowledge their wrong doings, either individually or collectively. This set of measures would reinforce the collective memory of past violations and promote social solidarity. They also constitute a concrete response to claims for bringing justice to the victims and help promote reconciliation, by restoring victims' confidence in the State.

Reference 223 - 0.01% Coverage

As part of the National Consultation on the Comprehensive Reparations Program, TDC conducted the National Survey on the Comprehensive Reparations Program for Victims of Human Rights Violations, during the fourth quarter of 2017, among a sample of 2045 out of

Reference 224 - 0.01% Coverage

Apologizing to the victims of human rights violations embodies commitment to the principles of transitional justice and willingness to seek forgiveness and pardon. It also means to acknowledge and accept liability and thus contributes to:

Reference 225 - 0.01% Coverage

460 Aaron Lazare (2006). "The Future of Apologies", New England Journal of Public Policy: Vol.21, Issue 1, article 8. 461 Adapted from Mustapha Boujaabout "Apologies for Serious Violations of Human Rights through the Experiences of Truth Commissions: Between Willingness, Reluctance and Scenarios of Recurrence of Past Violations" Mohammed V University - Faculty of Law - Agdal - Morocco. Journal of Human Rights Generation, Issue 25, p. 147

Reference 226 - 0.01% Coverage

National reconciliation is a major undertaking that will rehabilitate victims of human rights violations and hold those responsible accountable, without gloat or revenge.

Reference 227 - 0.02% Coverage

4. The State's reconciliation with citizen victims of human rights violations

The State's recognition of violations ensures that the victims regain their position within their families and within society, thus helping them restore their self-confidence, reconcile with themselves and with others, and eradicate past incidents and their remnants. The success of national reconciliation can only be achieved by bringing justice to the victims of human rights violations and implementing mechanisms stipulated under article 11 of the transitional justice law, which seek to ensure non-repetition of violations and transition from oppression to a democratic regime that contributes to the consolidation of the human rights system.

Reference 228 - 0.01% Coverage

XII. The attempt to enact the "economic reconciliation" law Within the framework of breaking with the past and preventing all political conflicts, and following the society's commitment to cease all forms of revenge, retaliation, stalking and to reject calls for retribution; in order to ensure compliance with the standards of good governance, the rule of law and respect for human rights; and after the decisive acceptance of

Reference 229 - 0.06% Coverage

1. Background of the "reconciliation" law The transitional justice process aims mainly to avoid repeating past gross or systematic human rights violations in the future, by revealing their truth, holding perpetrators accountable, providing reparation for the victims, implementing reforms of the relevant institutions, and preserving national memory, in order to achieve a comprehensive national reconciliation. It is a perfectly consensual process from start to finish. In fact, a broad national consensus policy was adopted relating to the organic law no. 2013-53 dated 23 December 2013, which was preceded by an extensive national consultation overseen by technical committees that toured the whole country and listened to all parties, including figures belonging to the pre-14 January 2011 regime. Several parties submitted draft laws on transitional justice. Some of their proposals were introduced to promulgate the organic law no. 33 by a comfortable majority on the same day that all political parties agreed to choose Mehdi Jomaa as Head of the Government, under the auspices of the National Dialogue Quartet. This implied the tremendous, symbolic and historical significance carried by the coincidence of a broad national consensus, and its continuation embodied in the selection of the 15 members of the Truth and Dignity Commission by the screening committee of the National Constituent Assembly, without referral to the plenary session for the selection of members by vote. The Truth and Dignity Commission continued to adopt the same mechanism of consensus and involvement of all parties in the elaboration of its bylaws and the composition of its internal commissions, to the extent of granting them reporting prerogatives, and in the elaboration of the Arbitration and Reconciliation Commission's manual of procedures, which took into consideration the proposals of several overlapping financial, judicial and human rights entities and some political parties, including ruling parties.

Reference 230 - 0.03% Coverage

The delegation also referred to the advice of the Venice Commission. The latter raised concerns about legal security for fear of inconsistency between laws, and stressed that there are inconsistent and conflicting competencies between the committee to be established and the Arbitration and Reconciliation Commission of the Truth and Dignity Commission. TDC's delegation spoke about the particularity of the

transitional justice process in Tunisia, as this experience belongs to the third generation of transitional justice where human rights violations are associated with economic and financial violations. It also emphasized the link between human rights violations and economic crimes. Enacting the said draft law implies the division of two interconnected components and disturbance of the transitional process. The Venice Commission recalled that the transitional justice process in Tunisia is also distinguished from its predecessors at the international level, thanks to the arbitration and reconciliation mechanism, on the one hand, and institutional reforms to ensure non-repetition of violations, on the other hand.

Reference 231 - 0.01% Coverage

The Truth and Dignity Commission presented a set of recommendations on institutional reforms to address past human rights violations, so as to ensure non-recurrence, to prevent the State from returning to past methods, and to contribute to setting the rules for a better future, by maintaining the Rule of Law.

Reference 232 - 0.02% Coverage

Institutional reforms require, notably, revising legislations, vetting State institutions and its services that turned out to be responsible for corruption and violations, modernizing their programs, restructuring them and rehabilitating their personnel. According to article 14 of the organic law no. 2013-53 dated 24 December 2013 establishing and organizing the transitional justice, and under the provisions of article 43 of the same law, TDC shall: ▪ Draft appropriate recommendations and suggestions as for political, administrative, economic, security, legal, media, educational, cultural reforms and of administrative vetting, and other recommendations and proposals at its discretion, to avoid relapse into repression, tyranny, violation of human rights and misuse of public monies.

Reference 233 - 0.01% Coverage

Since 2011, the Tunisian parliament has ratified many legal texts, mainly decree-laws, in the absence of the original constituent power. As a result, several decree-laws were issued, with a view to directly organizing the security and judicial institutions and to amending or substituting laws established by the former regime, particularly those considered to be restrictive of freedoms or representing a clear violation of human rights.

Reference 234 - 0.01% Coverage

- The Organic Law no. 2018-51 dated 29 October 2018 on the Human Rights Body.

Reference 235 - 0.01% Coverage

- Establishing all the independent constitutional bodies. For instance, the law on the establishment of the Human Rights Commission was adopted in October 2018. However, it has not started its activities yet; it is expected to begin its work by the end of 2018.

Reference 236 - 0.08% Coverage

2. Parliamentary oversight: An accountability tool for judicial and security institutions Oversight may take various forms. For example, but not limited to, article 145 of the Rules of Procedure of the Assembly of the Representatives of the People, adopted on 24 February 2015, provides that: "One or more members

may submit to members of the government written questions in a concise form, through the President of the Assembly of the Representatives of the People.” Article 146 of the Rules of Procedure also stipulates that: “Each member may, during a plenary meeting, ask oral questions to members of the government”. However, the Assembly of the Representatives of the People has not published figures on the oversight role until recently. In fact, the activity report of the Assembly of the Representatives of the People, for the first quarter of the fourth session, indicated that 28% of the oral and written questions concerned the national security and defense aspect. Parliamentary committees also play an important oversight role in this area, especially when holding hearing sessions with officials representing the executive power, since the accountability of the security and the judiciary institutions, in this context, remains complete and comprehensive. In this regard, we can refer to the hearing session held by the Security and Defense Committee on 3 January 2017 for Mr. Ghazi Jribi, the Minister of Justice, to discuss the situation of prisons and detention centers in the country over that period. The Rules of Procedure also allow the deputies to establish ad hoc committees of inquiry, in accordance with article 59 of the Constitution, as another oversight mechanism. These committees shall enable them to shed light on some incidents that show the executive power’s reluctance to provide certain necessary information. In this regard, four parliamentary committees of inquiry were established in 2016 and 2017. TDC notes that the deputies do not exercise these oversight prerogatives fully and effectively, due to a number of reasons, including insufficient knowledge of the procedures on this subject on the one hand, pressure exerted by the executive power and social actors and the lack of responsiveness and cooperation shown by administrations concerning such matters, on the other hand. This explains the lack of efficiency of this oversight mechanism, which has brought no significant result, at least since 2014. These committees have not imposed any form of strict accountability for some human rights violations perpetrated by some State institutions.

Reference 237 - 0.02% Coverage

The Tunisian legislation needs to enact more efficient laws, for example, a law on the classification of information within the State, since the current classification is not based on any legislative text. Instead, it rests upon arrangements that do not protect the right of citizens to access information and do not ensure an adequate interaction between security institutions and oversight structures, within the framework of guaranteeing non-recurrence of human rights violations and fighting corruption.

Reference 238 - 0.08% Coverage

Combining the external accountability mechanisms with the internal disciplinary measures (accountability and discipline) is the best way to prevent the recurrence of human rights violations. The internal measures of accountability and discipline are administrative decisions made to prohibit abuses, errors or acts of disobedience committed by public officials. Given the sensitive nature of the judicial and security functions, these two sectors disproportionately require the implementation of such measures within the institutions. Judicial measures include the creation of the Supreme Judicial Council, the establishment of a disciplinary council to adjudicate claims. Each council (judicial, administrative and financial) should have its own disciplinary council. Claims against a judge must be reported to the Minister of Justice or to the President of the Supreme Judicial Council. In all cases, the claim shall be referred to the Inspectorate-General of Judicial Affairs, which is in charge of investigating cases. The Ministry of the Interior's structural system had included the Inspectorate-General for National Security apparatus until 2011, when this structure was accused of covering up abuses committed by security forces officers against citizens and encouraging or ignoring such practices (inhuman treatment, corruption, disobedience of orders, etc.), with a decline in its activity. In 2017, the Central Inspectorate of services of the Ministry of the Interior was reinstated, pursuant to the governmental decree no. 2017-737 dated 9 June 2017, amending decree no.

91543 dated 1 April 1991, organizing the Ministry of the Interior. Nevertheless, little information has been published about the structure's activities; and the number of files that were submitted, investigated or adjudicated or statistics on claimants have not been declared. It is important that this sector have an effective and transparent internal accountability body to ensure the respect of Tunisians' fundamental rights. These measures are often based on generally accepted rules adopted by the employees themselves and transferred to each new employee. It seems that the security forces do not have a code of conduct and ethics, although this project has been under preparation since 2015 by the Ministry of the Interior, in partnership with the United Nations Development Program (UNDP). After the ratification of this document, TDC considers that:

- Programs should be established to consolidate these values among employees,
- Program oversight should be activated by the internal (the central inspectorate of the Ministry of the Interior's services) and the external (constitutional bodies and parliamentary oversight) accountability structures of the security institution,

Reference 239 - 0.04% Coverage

- Cooperation and coordination, within its mandate, should be carried out with national, regional, international and UN mechanisms, organizations, associations and human rights administrative structures,
- Citizens' concerns in the field of human rights and public freedoms should be taken into consideration, their queries should be handled, people should be guided, and petitions and complaints related to the said field should be received and processed, in coordination with the various structures relevant to the Ministry,
- Analyses and studies on the field of human rights and public freedoms should be carried out, and proposals aimed at disseminating the culture of protecting human rights and guaranteeing public freedoms and mechanisms aiming at achieving this objective, within the Ministry of the Interior, should be developed,
- Legal texts relating to the field of human rights, in connection with the activity of the Ministry of the Interior, should be drafted, and opinions on the subjects and drafts of the legal texts presented in the field should be expressed,
- All data and information relating to the field of human rights and public freedoms should be collected and documented, and contribution to the elaboration of awareness and awareness-raising productions, education, training and coaching programs in the field should be made, and
- Opinions should be expressed on training programs targeting the internal security forces that are relevant to human rights and public freedoms.

Reference 240 - 0.09% Coverage

the requirements of public order, national defense, public health or public morals, and provided there is proportionality between these restrictions and the objective sought. Judicial authorities ensure that rights and freedoms are protected from all violations. No amendment may undermine the human rights and freedoms guaranteed in this Constitution." This general restriction of fundamental rights and freedoms enables the development of a framework to implement the Constitution, by imposing an inventory of domains that may limit individual and collective freedoms, including the requirements for national defense, security and public interest. Even if the legislator tries to restrict the rights, which represent the cornerstone of rights and freedoms in Tunisia, some of them are absolute and cannot be affected by any restrictions. For instance, there are restrictions on the right to bodily integrity, which prohibit torture in all circumstances and are not subject to any exception. However, other rights are necessarily subject to restrictions, given the need to regulate the sphere of social and political interactions, as well as the need to regulate the foundations of coexistence, in order to determine the extent of individual freedom while

interacting with others. The clause will only be effective when applied to legal texts. So far, the aforementioned law related to the right of access to information is the only law that explicitly restricts rights provided for by the Constitution. Article 24 of this law stipulates that: "The concerned structure cannot refuse a request to access information, unless it undermines public security, national defense or international relations relevant to these two aspects, or third parties' rights to protect their private life, personal data and intellectual property. These areas shall not be considered as absolute exceptions to the right of access to information and shall be subject to the assessment of damage resulting from access, provided that the damage shall be serious, whether immediate or subsequent, and shall be subject to the assessment of the public interest resulting from the submission or non-submission of information, for each request. Proportionality between the interests to be protected and the purpose of the access request should be taken into account."

The state of emergency, special measures and guaranteeing inalienable rights Article 49 constitutes one of the pillars of the non-repetition of human rights violations in the new Tunisian legislation. However, the latter seems to be inconsistent with provisions that were previously enacted. The most obvious example, in this regard, is decree no. 1978-50 dated 26 January 1978, regulating the state of emergency, which "empowers the Governor in the areas referred to in article 2 above, and as required by the exigencies of security or public order, to: - Prevent the movement of persons and vehicles - Prevent any strike or reluctance to work, even if it is decided before declaring a state of emergency

Reference 241 - 0.01% Coverage

The consolidation of human rights and the respect of international standards ▪ Ratification and implementation of international treaties and conventions on human rights⁴⁶³

Reference 242 - 0.07% Coverage

conventions with the Ministries of Justice and the Interior to provide support, in order to start the reform process of many aspects of the security and judiciary facilities. The Support Program for the Reform of Justice (PARJ) was jointly developed, in 2012, by the Tunisian Government (Ministry of Justice) and the Delegation of the European Union to Tunisia to monitor, support and evaluate the reform efforts relating to the judicial institution. Another program to support the promotion of justice for children in Tunisia was jointly developed by the Ministry of Justice and UNESCO, to strengthen the capacity of actors from different departments and courts working in the area of judicial protection of children. The Ministry of the Interior, on its part, concluded several partnership agreements with international organizations, mainly the partnership agreement with UNDP. This Program was established in 2013 and it is expected to last until 2019; it should eventually provide the security forces with a code of conduct and ethics. It also aims to establish Community Policing and support the Ministry of the Interior, in order to develop the apparatus and performance of the inspectorates-general of the National Police and National Guard. Cooperation programs are national plans for the development and reform of the security and judiciary sectors. In addition to poor transparency with regard to these public policies, it seems that the Ministry of the Interior operates without a publicly available and documented action plan, except for the security forces sector-based strategies. However, a White Book on national defense and security was developed in 2015. Its publication was repeatedly announced, but remained mere ink on paper. The Justice institution is subject to more transparent planning. In fact, The Ministry of Justice announced the "Strategic Plan to Reform the Judicial and Prison System" in 2015. This document was developed by the Minister of Justice, Human Rights and Transitional Justice and the Interim President of the Commission for the Supervision of the Judiciary, adopting a methodology based on "consensual and participatory principles". The text outlines four goals to be achieved by 2019: ▪ To support the transitional justice process ▪ To concretize

the aspirations to establish a State of Law • To review the penal system • To modernize the judicial and prison system

Reference 243 - 0.08% Coverage

Legal safeguards taken to address past human rights violations and to avoid their recurrence

The legislative reforms that led to the establishment of independent institutions to enforce respect of the Constitution and the law, to monitor the judicial and security sectors and to provide relevant recommendations were already mentioned in this report. Other laws contribute to ensuring the non-recurrence of human rights violations, by providing direct legal and judicial safeguards to individuals. As such, the law No. 2016-5 dated 16 February 2016, amending and completing some provisions of the Criminal Procedure Code, is one of the most significant changes in the Tunisian legislation after 2011. It has been repeatedly noted that detention centers have often been places of torture and inhuman and degrading treatment, and more generally, places where all individual rights are denied. The presence of a lawyer in the arrest phase is now a fundamental right that will help resist such practices. Although no assessment of the degree of application of this law has yet been published, its symbolic and legal value actually makes it possible to resist practices that violate international standards. Tunisia has ratified all international obligations against torture. However, article 101 of the Penal Code remains incomplete, referring to the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). It is clear that the Tunisian law defines torture as being only practices aimed at obtaining information or confessions, while the text of the Convention extends this definition to include punishment, intimidation or unjustified pressure. Thus, the Penal Code may require a rapid change in this area.

The phenomenon of torture is a rooted practice in Tunisian history, as it affected tens of thousands of victims of different generations and groups of society, whether activists or citizens. It has been a systematic practice and a "governance mechanism" for decades, which resulted in a sense of injustice, oppression and hostility towards various State institutions, especially the security services. The revolution, which paved the way to democratic transition, represented the hope for thousands of victims of torture, as well as for human rights defenders, to provide redress for victims and follow the perpetrators of torture. Everyone had high hopes for the large-scale reform process launched in the country. However, the difficulties that faced the democratic transition, the heightened terrorist threat, and the weak human rights culture formed a general context that promoted continued torture and impunity.

Reference 244 - 0.02% Coverage

The counter-terrorism policy and the urgent need for safeguarding human rights

By the early 1990s, political opponents of the regime and human rights activists were besieged and prosecuted after their accusation of terrorism..

Following the adoption of law no. 2003-75 dated 10 December 2003, relating to the support of the international efforts of fight against terrorism and the repression of money laundering, the exploitation of the "war on terrorism" has become a systematic policy to criminalize any opposition and to rein in the entire public space. In fact, this law provides for harsh punishments incompatible with the gravity of the acts committed and has been implemented without respect for the minimum human rights. Therefore, hundreds of young people, from

Reference 245 - 0.09% Coverage

popular neighborhoods, were arrested after being snatched on for practicing religious rituals. They were tortured, arbitrarily arrested, tracked and tried in circumstances that did not comply with the fair trial conditions. Their families were subjected to collective pressure and sanctions, while prisoners themselves were subjected to administrative control upon their release from prison. In 2015, following the most striking terrorist act that had ever occurred in Tunisia after the revolution, the new anti-terrorism legal framework was ratified by the quick adoption of the draft law against terrorism, without consulting the experts and civil society. The latter condemned the draft law and considered that it did not comply with the requirements of the Constitution, since its provisions did not respect human rights and international treaties (death penalty, disclosure of the professional secrecy, loose definition of the terrorist offence, which opens the door for interpretation by the law enforcement officers). This law should be reviewed in order to be consistent with the provisions of the Constitution of the Republic of Tunisia and the international treaties regarding human rights, in order to ensure that the war on terrorism is not used as a means of suppressing human rights activists and political opposition, with the obligation of review of all legal provisions relating to the penal matter and its compliance with the requirements of the 2014 Constitution. Reform of the prison system and detention centers The justice sector is not limited to administrations and courts. It is worth recalling that the General Directorate of Prisons and Rehabilitation (DGPR) is also an institution under the supervision of the Ministry of Justice, pursuant to law no. 2001-51 dated 3 May 2001, relating to prison and rehabilitation executives and employees. There are two basic elements for the efficiency of the justice institution: • Regarding the Ministry of Justice: The volume and duration of cases held before the Tunisian courts consist a threat to everyone's fundamental right to a fair trial. This right is further threatened by the situation of persons in pre-trial detention, who sometimes spend the possible longest period without being brought before a judge. For instance, out of a total of 2,806,802 cases registered before the ordinary courts during the 20132014 judicial year, 2,005,508 cases were adjudicated. Tunisian prisons suffer from violations of law and international standards. Overcrowding is one of the main problems facing the prison system. This not only affects the security, conditions and cleanliness of prisons, but also the working conditions and safety of prison employees, in addition to delays in time limits and complicated legal procedures without taking into account people with special needs. The Ministry of Justice developed a national strategy for the 2015-2019 period to reform the prison sector. It is expected that the preliminary results enable a comprehensive

Reference 246 - 0.02% Coverage

The President of the Republic of Tunisia, as the symbol of the State, should apologize to all the victims of tyranny who were subjected to human rights violations by State organs, in the period covered by the transitional justice law through the following forms: • A statement by the President of the Republic of Tunisia to the victims of the period covered by the transitional justice law, and a nominal certificate from the text of apology to each victim. This shall be on the occasion of the inauguration of a memorial commemorating the victims and may be established in a square called "Apology Square".

Reference 247 - 0.03% Coverage

compensation decisions issued by TDC for the benefit of victims of severe human rights violations. The Government's responsibility is also to provide victims with sufficient and effective compensation through the implementation of compensation procedures set by TDC through the Comprehensive Compensation Program of the general framework decision⁴⁶⁷ fixing the compensation and rehabilitation criteria for victims of human rights violations.

II. The institutional reforms responsible for promoting the State democratic structure The institutional reforms aim at addressing the past human rights violations, so as to prevent the recurrence of violations

and to protect the State from any return to past methods and contribute to building the rules of a better future through the preservation of the rule of law. This requires the reform of institutions, especially the review of legislation and the screening of State institutions and their facilities, which have been found responsible for corruption and violations.

Reference 248 - 0.02% Coverage

The new constitution entrusted the judiciary with the responsibility to protect rights and freedoms, to uphold the rule of law, to protect the democratic system from crimes of grave human rights violations and complex crimes of corruption, to ensure peaceful transfer of power through effective judicial oversight of the election integrity by adjudicating electoral disputes and close oversight on funding of the electoral campaigns... The reform of the judiciary requires, essentially, the completion of its independence so that it can fulfill its constitutional role as an authority that ensures the administration of justice, the rule of law and the protection of rights and freedoms through working to introduce a set of reforms in accordance with the international standards for judicial independence. Therefore, TDC recommends that:

Reference 249 - 0.01% Coverage

467 The general framework decision no.2018-11 of 29 May 2018 fixing the compensation and rehabilitation criteria for victims of human rights violations <http://www.ivd.tn/> رارقلا-يراطلا-ربجل-ررضلا-ن /يحم

Reference 250 - 0.01% Coverage

- A law to protect witnesses and victims in cases involving human rights violations, corruption and manipulation of State institutions should be enacted.

Reference 251 - 0.02% Coverage

and watches over the citizens' tranquility A comprehensive reform of the security sector goes through restructuring, introducing more transparency, oversight and practices that respect rights, and establishing sound professional values based on the consistency between providing security for citizens and protecting their rights, in line with the international standards, and interrupting allegations of conflicts of security efficacy while guaranteeing public freedoms, respecting human rights with the obligation to protect constitutional institutions. Therefore, TDC recommends that: • Various laws and statutory instruments governing the security sector should be compiled in a standard code, while ensuring their conformity with the Constitution and the international standards.

Reference 252 - 0.02% Coverage

- The extent to which the Code of Conduct of the security personnel is respected should be strictly overseen by the internal and external accountability structures of the security and external institution (constitutional bodies and parliamentary oversight). The accountability mechanisms and the internal discipline measures should be more effective by activating the general inspectorate of internal security and making it more transparent by declaring the number of files submitted, investigated or considered. Statistics on complainants should be posted to prevent the recurrence of human rights violations.

Reference 253 - 0.01% Coverage

- Establishing the independent constitutional bodies provided for in article 6 of the Constitution, which have not been yet created, in particular the audiovisual communication commission, the human rights commission, the good governance and anti-corruption commission, the sustainable development and the rights of future generations' commission and assurance of the independence of these bodies as required by the Constitution.

Reference 254 - 0.02% Coverage

6. Reforms related to the right to life and the right to liberty and security The phenomenon of torture is a rooted practice in Tunisian history, as it affected tens of thousands of victims of different generations and social groups, whether activists or citizens. It has been a systematic practice and a "governance mechanism" for decades, which resulted in a sense of injustice, oppression and hostility towards various State institutions, especially the security services. The State should take all legislative and regulatory measures to restore confidence in the State institutions by ensuring the non-recurrence of human rights violations.

Reference 255 - 0.01% Coverage

- Criminalize the practice of enforced disappearance.
- Implement and respect all human rights treaties; provide the Tunisian State with all its international obligations, in particular to follow up the concluding observations of international bodies such as the Committee against Torture and all UN human rights bodies and mechanisms.

Reference 256 - 0.01% Coverage

- Train law enforcement officers in the field of respecting human rights and of republican security values.

Reference 257 - 0.01% Coverage

- Punish any violation of human rights through act, encouragement, justification or incitement and criminalize denial of past violations through act, encouragement or justification.

Reference 258 - 0.01% Coverage

- To establish health centers and institutions with all specialties related to sexual and reproductive health and psychologists provided that these institutions should bear names of women victims of human rights violations and should be constructed mainly in less favored areas in terms of health services.

Reference 259 - 0.01% Coverage

- Registering the sites of Sabbat Edhalem and the Mausoleum of Sidi Aissa, in Beni Khalled, by the National Heritage Institute as a landmark for gross human rights violations

Reference 260 - 0.01% Coverage

- Registering the Civil Prison of Ennadhour in, Bizerte, as a site for gross violations of human rights and turning part of the corridor leading to the basement and the section to the right of the corridor and the basement into a museum to preserve memory.

Reference 261 - 0.01% Coverage

- Working to continue the research and investigation to uncover the official and unofficial sites of gross violations of human rights, especially the farm of "Naassan", "Mabrouka 1", "Mabrouka 2" and other secret prisons, which TDC has not been able to locate and which have been for decades secret sites of torture and turn them into national memory sites.

Reference 262 - 0.01% Coverage

- To erect a national memorial commemorating victims of serious human rights violations.
- To establish memorials and sculptures in open locations such as streets, squares and institutions that have witnessed grave human rights violations.

Reference 263 - 0.02% Coverage

- To name streets, roads, squares, parks, educational and cultural institutions after the victims who died or were missing due to serious human rights violations, in order to avoid all references to the commemoration of the authoritarian rule by the dominant designations in the public space, such as the streets of Habib Bourguiba in all cities of Tunisia and the proper commemoration of his name.
- To review the names of many streets in order to ensure that they are linked to collective memory, namely the deletion of names that have been associated with grave human rights violations, such as Taieb Mhiri and others who have been involved in violations,

Reference 264 - 0.03% Coverage

A big national museum in the Capital called the "National Dignity Museum", in memory of the grave violations of human rights, should be established. It shall include all the information related to the violations found in Tunisia between 1955 and 2013, a register of victims, photos, videos, films, documents, public testimonies of the victims, all the effects related to the violations, the map of memory museums in different regions and the map of the different memorials. It shall value all the data and conclusions reached by TDC and the different publications and audiovisual products. • To include the results of its final report regarding the events of the National Movement, the liberation struggles and the list of martyrs, resistance fighters who have been checked and not previously included in the history of the National Movement at the Museum of the Martyrs of the Homeland in Sijoumi.

Reference 265 - 0.01% Coverage

- To launch a broad national dialogue on the review of the educational system that takes into account the human rights contents

Reference 266 - 0.01% Coverage

- To revise the legal texts relating to the functions of the Higher Institute of Contemporary History of Tunisia in line with the archival legacy of the national memory and draw upon it to write the history of

human rights violations between 1955 and 2013 with impartiality, credibility and independence away from political exploitation.

Reference 267 - 0.04% Coverage

This law should also refer to the modes of access and their time limits, the mode of access to documents and types of documents that can be accessed, the rights of victims to access to archives or files of interest to them and their right to modify the data contained in documents issued by official authorities at the time of tyranny from 1955 to 2013. This law should also indicate that all archives relating to human rights violations during the period dealt with by the Truth and Dignity Commission should be carried over to the section dedicated to the archives of violations in the National Archives, while ensuring its physical integrity and the unity of its place of preservation. It should indicate also measures to protect witnesses and victims, to protect personal data, the dignity, the well-being and the benefit of victims when accessing to this archive. It should stipulate the authorization of victims or their families to access to their confidential statements or to use their own data and the authorization to use or publicize their images or voices. This section should also contain penal provisions in case of violations of its provisions relating to destruction, forgery, fraud, embezzlement, negative affection of personal data, dignity or interest of victims, or exposing witnesses and victims to the risk of assault through violation of access requirements.

Reference 268 - 0.02% Coverage

TDC recommends the creation of an institution to preserve the national memory of human rights violations, which will set and define the national policy in memory preservation and commemorate the victims. It is an institution with legal status and financial and administrative independence and is headquartered in Tunis and can open branches within the territory of the Republic. It also recommends that prison memos and literature be included in literary books taught at high schools and at the faculties of arts.

Reference 269 - 0.01% Coverage

The submitted files included 47468 files related to human rights violations of all kinds, including: - Gross or systematic violations of political and civil rights - Gross or systematic violations of economic, social and cultural rights

Reference 270 - 0.01% Coverage

5. Distribution of files of victims of human rights violations and embezzlement of public funds, by governorate

Reference 271 - 0.01% Coverage

Figure 2. Distribution of files of victims of Human Rights violations and embezzlement of public funds by governorate

Reference 272 - 0.02% Coverage

6. Distribution of the files in which the victim's status has been proven, by nature of the violation The submitted files included human rights violations of all kinds: • Gross violations related to political, civil and

economic rights: 17649 • Systematic violations related to social and cultural rights: 8417 • Other violations mentioned in the Transitional Justice Law: ▪ Financial Corruption and embezzlement of public funds: 3266 ▪ Electoral Fraud: 368 ▪ Systematic marginalization and exclusion of specific regions or groups: 290 ▪ Minority Files: 4 ▪ Files in which the file applicant has the status of a witness of a violation: 173

Reference 273 - 0.01% Coverage

Violations that occurred in the context of counter-terrorism Violations against Human Rights activists

Reference 274 - 0.01% Coverage

Individuals victims of Human Rights violations

Reference 275 - 0.01% Coverage

Individual victims of Human Rights violations: 6653

Reference 276 - 0.01% Coverage

Human Rights 232

Reference 277 - 0.01% Coverage

Human Rights 9

Reference 278 - 0.01% Coverage

Violations against Human Rights activists 45 20

Reference 279 - 0.01% Coverage

Violations against Human Rights activists