

76 These then are, in summary, the main findings of the Commission, while more specific findings appear in the body of the report. The Commission's case in regard to the primary actors to the conflicts of the past is developed below.

■ PRIMARY FINDING

77 On the basis of the evidence available to it, the primary finding of the Commission is that:

THE PREDOMINANT PORTION OF GROSS VIOLATIONS OF HUMAN RIGHTS WAS COMMITTED BY THE FORMER STATE THROUGH ITS SECURITY AND LAW-ENFORCEMENT AGENCIES.

MOREOVER, THE SOUTH AFRICAN STATE IN THE PERIOD FROM THE LATE 1970S TO EARLY 1990S BECAME INVOLVED IN ACTIVITIES OF A CRIMINAL NATURE WHEN, AMONGST OTHER THINGS, IT KNOWINGLY PLANNED, UNDERTOOK, CONDONED AND COVERED UP THE COMMISSION OF UNLAWFUL ACTS, INCLUDING THE EXTRA-JUDICIAL KILLINGS OF POLITICAL OPPONENTS AND OTHERS, INSIDE AND OUTSIDE SOUTH AFRICA.

IN PURSUIT OF THESE UNLAWFUL ACTIVITIES, THE STATE ACTED IN COLLUSION WITH CERTAIN OTHER POLITICAL GROUPINGS, MOST NOTABLY THE INKATHA FREEDOM PARTY (IFP).

■ FINDINGS IN RESPECT OF THE STATE AND ITS ALLIES

I further do not believe the political defence of 'we did not know' is available to me because in many respects I believe we did not want to know. (Mr Leon Wessels, State Security Council hearing.)

The Security Forces will hammer them, wherever they find them. What I am saying is the policy of the government. We will not sit here with hands folded waiting for them to cross our borders. We shall carry out ongoing surveillance. We shall determine the correct targets and we shall settle the hash of those terrorists, their fellow-travellers and those who help them. (General Magnus Malan, Minister of Defence, parliamentary speech, 4 February 1986.)

All the powers were to avoid the ANC/SACP achieving their revolutionary aims and often with the approval of the previous government we had to move outside the boundaries of our law. That inevitably led to the fact that the capabilities of the SAP, especially the security forces, included illegal acts. (General Johan van der Merwe, former commissioner of police, armed forces hearing.)

There was never any lack of clarity about 'take out' or 'eliminate', it meant that the person had to be killed. (Brigadier Alfred Oosthuizen, former head of Security Branch intelligence section, armed forces hearing.)

- 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.
- 79 The Commission concluded that, at a certain point in the mandate period, the state resorted to unlawful ways of dealing with challenges to its authority. The period during which the South African state ventured into the realm of criminal misconduct stretches from PW Botha's accession to power in 1978 into the early 1990s, including a part of the period in which his successor held office.
- 80 At the beginning of the mandate period, the system of government in the country was undoubtedly an unjust and discriminatory one, but it was still essentially a system of laws, albeit unjust laws. In the course of the first two decades of the mandate period, the rule of law was steadily eroded and the system of public administration purged of its remaining democratic substance. By the time President Botha took power, the system was characterised by severe repression. It had not yet, however, adopted a policy of killing its opponents.
- 81 This is not to suggest that prior to 1978 the state did not kill its opponents. Indeed, it had just recently killed hundreds in its suppression of the Soweto uprising. The mandate period itself began with a massacre of protesters at Sharpsville in 1960. These two sets of killings, and numbers of other routine killings of demonstrators, occurred in the course of the SAP's public-order policing policy involving, in the Commission's view, an unjustifiable use of deadly force.
- 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.