



Volume **SIX** • Section **ONE** • Chapter **FOUR**

**Report of the
Amnesty Committee**

LEGAL CHALLENGES

Legal Challenges

■ INTRODUCTION

1. On 29 October 1998, the Truth and Reconciliation Commission (the Commission) submitted its Final Report to President Mandela. It is a matter of public record that this historic occasion almost failed to take place due to the threat of two legal challenges which, had they succeeded, would have prevented the Commission's Report from being published at this time. Those who instigated these two court actions were the African National Congress (ANC) and former State President Frederick Willem de Klerk.
2. After submitting its Report to the President, the Commission and its Commissioners were placed in suspension pending the completion of the work of the Amnesty Committee (the Committee), which was eventually dissolved on 31 May 2001. This chapter supplements Chapter Seven of Volume One of the Final Report ('Legal Challenges'), and covers the period from October 1998 until dissolution of the Commission.
3. Subsequent to November 1998, the Commission was subjected to further legal challenges, mainly against the decisions of the Committee in respect of various amnesty applications. In addition, several matters that had been initiated before October 1998 were finalised during this period. These included complaints to the Public Protector by the Inkatha Freedom Party (IFP) and by certain generals of the former South African Defence Force (SADF).⁴⁵
4. The IFP also launched an application in the High Court with the aim of compelling the Commission to provide all the information and evidence it possessed relating to the findings made against the IFP in the Commission's Final Report. This matter is dealt with below.

⁴⁵ Reported on in Volume One, pp. 196–7.

LEGAL CHALLENGES TO THE PUBLICATION OF THE COMMISSION'S REPORT

African National Congress⁴⁶

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
6. The ANC's submissions were largely critical of the Commission's competence, integrity and bona fides in respect of the findings on the ANC. The ANC was especially concerned in view of the fact that the struggle for liberation against the unjust system of apartheid was in itself morally and legally justifiable in terms of international law.
7. 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.

46 The African National Congress v The Truth and Reconciliation Commission: Case No. 1480/98 (Cape of Good Hope Provincial Division).

47 Those findings appear in Volume Two, Chapter Four, pp. 325–66.

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.

Events leading up to the ANC's legal challenge

12. On 24 August 1998, the Commission served notice on the ANC (in terms of section 30(2) of the Act) that it intended to make certain findings against the ANC that would be to the latter's detriment. The notice invited the ANC to respond either by leading evidence before the Commission at a hearing or furnishing submissions within fifteen days of the date of the notice. This meant that the ANC was obliged (in terms of the provisions of the Act) to respond to the notice by no later than 8 September 1998 if it elected to make further submissions or bring further evidence.

13. The ANC failed to respond within the time limit stipulated. Instead, it entered into a series of correspondences with the Commission, seeking an extension of the deadline and requesting an audience with the Commission to discuss the findings the Commission intended to make against it.
14. In this context, it needs to be clearly understood that the Commission was required to set certain absolute deadlines for the receipt of information in order to finalise the editing, printing and publishing of the Final Report by the already determined handover date of 29 October 1998. Yet, despite various extensions acceded to by the Commission, no written submissions were forthcoming from the ANC. The Commission also explained in detail to the ANC why it could not grant the requested audience and, on 2 October 1998, informed the General Secretary that 5 October 1998 would be the last date on which the Commission would be able to consider any submissions.
15. On 19 October 1998, the ANC made its submission to the Commission. On 26 October 1998, the Commission informed the ANC that the submission had arrived too late to be considered but that, nevertheless, some but not all the Commissioners had been given access to the submission and that much of the factual content referred to in the objections had been rectified during the editing process. The ANC was also assured that its position as a liberation movement had been contextualised in the chapter on 'The Mandate' and that the findings of the Commission were based on a careful analysis of the evidence placed before it.
16. The ANC expressed its dissatisfaction with the Commission's response and demanded an assurance from all the Commissioners that they had properly considered all the issues and matters raised in the written submissions of 19 October 1998. The Commission responded on the same day, reiterating its earlier position and indicating that there was nothing more that could be done. The ANC responded with its legal challenge.

The court finding

17. In a judgment by Mr Justice J Hlope, the court dismissed the ANC's application with costs. In summary, the court found that the onus was on the ANC to establish the existence of a clear right (or a right clearly established in its favour) for the granting of an interdict to prevent the publication of the Commission's findings against the ANC. The court found that the Commission was entitled (in terms of section 30(1) of the Act) to adopt a procedure for the purposes of implementing

the provisions of section 30(2) (the notice provisions). The procedure was to invite submissions in writing before it made findings to a person's detriment or to receive evidence at a hearing of the Commission, as the case might be.

18. The court found that there had been no objection by the ANC to the fifteen-day notice period. This was substantially in accordance with the ruling in the case of Niewoudt v Truth and Reconciliation Commission 1997 (2) SA 70 SECLD at 75 H-I. The ANC had not argued that this time period was unreasonably short, nor had it elected to testify at a further hearing of the Commission.
19. The ANC was, as a result, lawfully obliged to respond to the section 30(2) notice by no later than 8 September 1998 and, in the circumstances, had no right to insist on a further extension of time. Any extension of time granted by the Commission would be the result of largesse rather than legal obligation.
20. The Commission had clearly impressed on the ANC that it should make its submissions by 5 October 1998, given the Commission's responsibility to finalise the report for handover to the President. Because the ANC submission tendered on 19 October 1998 was extensive and contained serious allegations regarding the Commission's competence, integrity and bona fides, it was unreasonable to have expected it to convene as a body between 19 and 29 October 1998 to discuss and deliberate on submissions delivered so late in the day.
21. The court found that the ANC had failed to prove that the Commission had either condoned the late filing of the submission (in terms of section 30(2) of the Act) or that the ANC had a legitimate expectation of having the submission considered by the Commission, given the fact that the Commission had set 5 October 1998 as a final date for submission in extension of the original date of 8 September 1998, when the submission had been lawfully due.

Former State President de Klerk's challenge⁴⁸

22. On 1 September 1998, the Commission gave notice to former State President FW de Klerk of its intention to make findings against him to his detriment (in terms of the provisions of section 30(2) of the Act). The findings it contemplated making were set out in an annexure to the notice. Mr de Klerk was notified of his rights under the section 30(2) provisions and was required to respond to them. The Annexure read as follows:

⁴⁸ FW de Klerk and Another v The Chairperson of the Truth and Reconciliation Commission and the President of the Republic of South Africa: Case No. 14930/98 (Cape of Good Hope Provincial Division).



23. Despite objections by Mr de Klerk, the Commission resolved to publish its findings. As a result, on 26 October 1998, Mr de Klerk filed an urgent application

with the Cape High Court for an order directing, *inter alia*, that the Commission be interdicted from:

- a making any of the intended findings set out in the annexure to the notice dated 1 September 1998 issued in terms of section 30(2) of the Act;
 - b including any of the intended findings in the report to be submitted to the President on 29 October 1998; and
 - c submitting the report to the President, should it contain any of the intended findings.
24. The Commission's findings against Mr de Klerk were challenged on various grounds, including allegations of bias against him by members of the Commission.
25. Given the timing of this legal challenge (26 October 1998) and the fact that the Commission was due to hand over its Report on 29 October 1998, the Commission was advised by its legal team not to risk an interdict, which would have had the effect of preventing the Report from being handed over to President Mandela. The Commission acted on this advice and agreed not to publish the finding and to deal with the matter after publication and the handover.
26. The Commission 'blacked out' the findings.
27. The matter was to be set down for hearing in the Cape High Court. In the intervening period, the President's Office tried to facilitate a settlement between the Commission and Mr De Klerk. As the full Commission was in suspension and the Amnesty Committee was the only body in existence at the time, it entered into discussions with Mr De Klerk in an effort to resolve the matter.
28. As a result of these discussions, the Amnesty Committee accepted the following finding, which Mr De Klerk conceded to.
29. ***Proposed finding relating to Mr FW de Klerk's knowledge of the Khotso House bombing:***

Mr FW de Klerk was a member of the State Security Council throughout the 1980s and State President and head of the former government during the period 1989 to 1994.

On 31 August 1988, Khotso House, which was located in the central business district of Johannesburg, a densely populated urban area, was bombed by members of the SAP. The bomb had immense explosive force, rendered Khotso

House unusable and damaged neighbouring properties and vehicles. There was a high risk to passers-by who could have been killed or injured; there were blocks of flats in the immediate vicinity which were inhabited; there was a flow of pedestrian traffic in the area which was very high till the early hours of the morning. The effect of the explosion was unpredictable. Colonel Eugene de Kock, who led the SAP bombing team, foresaw the possibility of loss of life as did Mr Vlok, who considered it a miracle that no one was killed. The group of policemen who carried out the task did so armed with automatic assault rifles with orders to shoot – if necessary – even at fellow policemen. As a result of the blast, a number of persons were injured (though not seriously). The inherent risk in unleashing a devastating explosion in a high-density area in the circumstances described above, involved the risk that persons might be killed. This risk was inevitably foreseeable and was in fact foreseen; the bombing was nevertheless ordered and proceeded with by the perpetrators with reckless disregard of the consequences.

During his presidency, Mr de Klerk was told by General JV van der Merwe, his former Commissioner of Police, that he had been ordered as head of the Security Branch of the SAP to bomb Khotso House. Mr de Klerk did not report the matter to the prosecuting authorities or the Goldstone Commission because he knew that General van der Merwe would be applying for amnesty in respect of the relevant bombing.

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.

In a written question directed to Mr de Klerk on 12 December 1996, he was asked whether he maintained this assertion in the light of the allegation made by General van der Merwe against Mr Vlok. The allegation was to the effect that Mr PW Botha had instructed Mr Vlok to bomb Khotso House, and that Mr Vlok, in turn, had instructed General van der Merwe to do so. In his written reply on 23 March 1997, which reflected his views at the time of the preparation of his submission as well as the views of as many of his Cabinet colleagues as were conveyed to him at the time, he stated that Mr Vlok and any other members of former

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.

The Commission finds that when Mr de Klerk testified to the Commission on 21 August 1996 and responded in writing to the Commission's questions on 23 March 1997, he failed to make a full disclosure of the involvement of senior members of the government and the SAP in the bombing of Khotso House.

30. However, this finding was never made an order of court as it was never put to the Commission and was thus never discussed, accepted or rejected.

COMPLAINTS TO THE PUBLIC PROTECTOR BY THE IFP AND FORMER SADF GENERALS

31. Both the IFP and a group of former SADF generals made formal complaints to the Office of the Public Protector concerning what they claimed to be disparate treatment of themselves by the Commission. The Commission responded fully to the allegations and the Public Protector neither took nor recommended any action against the Commission.
32. The Commission considers both these matters to be finalised.

LEGAL CHALLENGE: IFP REQUEST FOR INFORMATION⁴⁹

33. As a result of its investigations and hearings in terms of section 29 of the Act, the Commission served notice on the IFP and its leader, Chief Mangosuthu Buthelezi, and other members of the IFP, of the contemplated findings it intended to make against them, which were to their detriment. They were invited to respond in writing. On 24 August 1998, the Commission received a comprehensive submission from legal representatives for the IFP, Chief Buthelezi and the other implicated persons. The findings appear in full in Volume Three of the Final Report.⁵⁰
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.
36. The organisation was responsible for the following conduct:
 - a speeches by the IFP President and senior party officials, inciting supporters to commit acts of violence;
 - b mass attacks by members and supporters on persons regarded as their political enemies;
 - c the killing of leaders of political organisations and their supporters who were opposed to Inkatha/IFP policies;
 - d colluding with the South African government's security forces to commit the violations referred to;
 - e colluding with the SADF to create a paramilitary force to carry out such violations;

⁴⁹ Inkatha Freedom Party and Mangosuthu Gatsha Buthelezi v Truth and Reconciliation Commission, The President of the Republic of South Africa and the Minister of Arts, Culture, Science and Technology: Case No. 6879/99 (Cape of Good Hope Provincial Division).

⁵⁰ Chapter Three, pp. 155–328.

- f creating self-protection units made up of the organisation's supporters with the specific objective of violently preventing the holding of elections in KwaZulu-Natal in April 1994; and
- g conspiring with right-wing organisations to commit acts that resulted in injury or loss of life.
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.
38. In court papers served on the Commission in December 1998, the IFP and Chief Buthelezi declared that they regarded the findings of the Commission to have been defamatory of the organisation and himself, unwarranted and unjustified, and not supported by the information and evidence collected or received by the Commission. In the court application, the IFP and Chief Buthelezi sought an order compelling the Commission to provide all the information collected and received upon which it had made its findings. This claim was based on the provisions of section 32(1) of the 1996 Constitution, which reads:
- Everyone has the right to access to – (a) any information held by the state; (b) any information that is held by another person and that is required for the exercise or protection of any rights.*
39. When this matter was argued before Mr Justice Davis in the Cape High Court, the Commission contended, first, that it was not an 'organ of State' nor 'in any sphere of Government' and, second, that the information sought had not been proved to have been required for the exercise and protection of any of the applicants' rights.
40. On 15 December 1999, Mr Justice Davis dismissed the application with costs. The court upheld the second of the Commission's objections, namely that the applicants had not established that the information was required for the exercise and protection of any of their rights. It further held that the applicants should either have sued the Commission for defamation based on bad faith (*male fide*) if so proven, or brought review proceedings in terms of rule 53(3) of the Uniform Rules of the High Court to set the Commission's finding aside.

Settlement

41. The applicants subsequently applied for leave to appeal to the Constitutional Court against the judgment of Mr Justice Davis. This was granted, and the matter was set down for hearing on 9 November 2000. Before the appeal to the Constitutional Court was heard, the parties settled the matter on the basis that each party would withdraw their respective appeals and pay their own legal costs. The Commission agreed to provide access to the record of information and evidence to the applicants by 1 March 2001, on condition that appropriate measures were employed to safeguard the confidentiality of persons who had made statements to the Commission.
42. The decision to settle the matter was based on the consideration that the Promotion of Access to Information Act No. 2 of 2000 was due to be gazetted on 15 September 2000 and that this legislation would have entitled the applicants to obtain the information they were seeking. To proceed with an appeal on a point of law about to be settled by the promulgation of an Act would have been futile and a waste of resources. This decision was taken after consultation with the Commission's senior counsel and in terms of a resolution of the Amnesty Committee acting in terms of section 43 of Act No. 34 of 1995.
43. Despite the above settlement arrangements, the IFP and Chief Buthelezi instituted review proceedings against the findings of the Commission on 20 October 2000.
44. Just before the Commission was due to publish its Codicil, the IFP interdicted it from publication on the grounds that the terms of the settlement had not been met.
45. Discussion culminated in a settlement which was finalised at a hearing on 29 January 2003. The requirements agreed in the settlement appear as an Appendix to Chapter 3 of Section Four of this Volume.

CHALLENGES TO AMNESTY DECISIONS

Clive Derby-Lewis and Janusz Walus: The killing of Chris Hani⁵¹

46. The facts, issues and legal arguments in this matter are reflected in the court's decision in the above case, handed down on 15 December 2000. A summary of the main points and aspects of the review proceedings follows. It needs to be stressed that the source of this summary is the court record and judgment, and should in no way be interpreted as a comment by the Commission or the Committee on its own amnesty decision.
47. On 10 April 1993, Mr Janusz Walus shot and killed Mr Martin Thembisile Hani (aka Chris Hani) in the driveway of the latter's residence in Dawn Park, Boksburg. Mr Walus was arrested on the same day, as were Mr Clive Derby-Lewis and his wife, Mrs Gabrielle (Gaye) Derby-Lewis. They were all charged in the Witwatersrand Local Division of the High Court with, amongst other things, the murder of Mr Hani. All three accused pleaded not guilty, but both Mr Derby-Lewis and Mr Walus were convicted of the murder of Mr Hani and the unlawful possession of the murder weapon (a Z88 pistol). Mr Derby-Lewis was also convicted of the unlawful possession of five rounds of ammunition. Mrs Derby-Lewis was acquitted of all charges against her.
48. On the 15 October 1993, both applicants were sentenced to death on the murder count. Both Derby-Lewis and Walus appealed to the Supreme Court of Appeal against their convictions and sentences; but their appeals were turned down in November 1995. The death penalty was, however, declared unconstitutional by the Constitutional Court on 6 June 1995.⁵² As a result, the applicants escaped the gallows and had to be re-sentenced by the trial court. On 14 November 2000, the court imposed sentences of life imprisonment on both Derby-Lewis and Walus.
49. In April 1996, the applicants applied for amnesty for the murder convictions and the unlawful possession of the murder weapon and, in the case of Derby-Lewis, the illegal possession of ammunition. The SACP and the family of Chris Hani strenuously opposed the applications for amnesty.

51 Clive John Derby-Lewis and Janusz Jakub Walus v The Chairman of the Committee on Amnesty of the Truth and Reconciliation Commission, his Lordship Mr Justice H Mall N.O., The Honourable Chairman of the Truth and Reconciliation Commission, the Right Reverend Archbishop Desmond Tutu, Ms Limpho Hani and The South African Communist Party; Case No. 12447/99 (Cape of Good Hope Provincial Division).

52 See S v Makwanyane and Another 1995 (3) SA 391 (CC).

50. The applications for amnesty were considered by the Amnesty Committee, comprising Mr Justice Mall (as chair) and Judges Wilson, Ngoepe, Potgieter and Khampepe.
51. On 7 April 1999, the Committee refused the amnesty applications of both applicants. Subsequently, an application for a review of the Committee's refusal was brought before a full bench of the High Court, Cape of Good Hope Provincial Division. The applications for a review were opposed by the chairperson of the Committee as well as the Hani family and the SACP.

The facts

52. Mr Clive Derby-Lewis was a founder member of the Conservative Party (CP) in February 1982. In 1987, he became the party's spokesperson on economic affairs and represented the CP in Parliament between May 1987 and September 1989. He was an elected member of the CP's General Council (the highest body of the party).
53. The CP regarded the unbanning of the ANC and SACP by former President FW de Klerk in February 1990 as a betrayal of the country. In May 1990, at a mass meeting of the CP at the Voortrekker Monument, Dr Andries Treurnicht, the leader of the CP, announced that the 'third freedom struggle' had begun. Derby-Lewis regarded this speech as a 'call to arms for Afrikaners' implying that, although diplomatic channels remained open to the CP, its followers should prepare for war and arm themselves accordingly. There was increasing fear within the CP of a National Party (NP) handover to an ANC/SACP government without a mandate from white voters. Various calls to arms led to the implementation of the CP mobilisation plan on 26 March 1993. This was seen as the only way of saving South Africa from plunging into misery and chaos should the ANC/SACP alliance take over the government of South Africa. As the leader of the SACP, Mr Chris Hani was regarded by the CP as the real threat to the future of South Africa. His leadership role and his past position as Chief of Staff of Umkhonto we Sizwe (MK) made him a prime military and political target. The CP regarded him as 'enemy number one' of the Afrikaner nation and the likely successor as President to Mr Nelson Mandela.
54. Against this background, Derby-Lewis and Walus started to plan the assassination of Hani in about February 1993. Their objective was to create a situation in which the radicals who supported Hani would cause widespread chaos and mayhem in the wake of his death. Because the NP would not be

able to take effective control, this situation would unite right-wing leaders. They would then be able to combine with the security forces and, by 'stepping in', trigger a 'counter-revolution' and take over the government of the country.

55. Despite the above, the evidence reflected that the CP did not espouse a policy of violence nor the killing of political opponents. It was also common cause that neither Derby-Lewis nor Walus had received any direct or indirect order from anyone in the top structure of the CP to assassinate Hani. Equally plain was the fact that the plan to assassinate Hani was not shared with anyone else. Nevertheless, Derby-Lewis contended that, by virtue of his senior position in the CP, he had the necessary authority in the prevailing circumstances to take the decision to assassinate Hani on behalf of the CP.
56. Derby-Lewis handed Walus a list of names and addresses he had obtained from his wife, a journalist. Walus numbered these names on the list. This was done at a time when Derby-Lewis and Walus had 'started talking about the identification of targets'. Derby-Lewis insisted that they discussed only one target, namely Hani, who had been number three on the list.
57. It was agreed that Walus would carry out the shooting after a certain amount of surveillance had been carried out. During March 1993, Derby-Lewis claimed that he had obtained a Z88 pistol and silencer. This was ostensibly for self-defence purposes, while the silencer was primarily to allow him to practice at home without disturbing the neighbours. It was intended to provide some element of surprise if he were to be attacked at his home by either MK or the Azanian People's Liberation Army (APLA).
58. Walus had requested an 'untraceable weapon with a silencer' for the purpose of the assassination.
59. On 6 April 1993, Derby-Lewis handed Walus the pistol and a few rounds of subsonic (silencer) ammunition. On 7 and 10 April, Walus requested further subsonic ammunition. On the morning of 10 April, Derby-Lewis informed Walus that he had made arrangements for further ammunition. No discussion about killing Hani took place on that particular day. The shooting of Hani came as a shock to Derby-Lewis because he had wanted to postpone the assassination plan for a variety of reasons.

60. Although Walus' evidence largely coincided with that of Derby-Lewis, Walus indicated that Derby-Lewis had mentioned to him that before the Easter weekend would be a bad time to assassinate Hani.
61. On 10 April 1993 (the day before Easter), Walus decided to reconnoitre the Hani residence. After contacting Derby-Lewis about more subsonic ammunition and being told that it was not yet available, he loaded the unlicensed Z88 pistol with his own ammunition.
62. On arriving at the Hani residence, Walus noticed Hani driving off in his vehicle without his usual bodyguards. He decided that this was the 'best occasion' to execute the assassination and waited for him to return. When Hani got out of his vehicle in the driveway to his house, Walus approached him and fired two shots at him. After he had fallen, Walus shot him twice at close range behind the ear. He left the scene in his vehicle and was arrested a short while later.
63. Walus insisted that he had killed Hani on the instruction of Derby-Lewis and the CP. He had never expressly asked Derby-Lewis whether the CP had authorised the assassination, as it was 'obvious' to him that it had. However, Walus conceded that, had it come to his attention prior to April 1993 that the CP had not changed its policy from non-violence to violence, he would not have proceeded with the murder.

The decision of the Amnesty Committee

64. The basis of the Committee's refusal of amnesty was that it found that both Derby-Lewis and Walus had failed to satisfy two of the three jurisdictional pre-conditions for the granting of amnesty as set out in section 20(1) of the Act: that is, they had failed to comply with the requirements of section 20(1)(b) read together with section 20(2), and they had not made a full disclosure of all relevant facts as required by section 20(1)(c).
65. With reference to section 20(2)(a), the Committee was not satisfied that, in assassinating Hani, the applicants had acted on behalf of or in support of the CP, the publicly-known political organisation of which both applicants were members at the time of the assassination. The Committee expressed itself as follows:

It is common cause that the applicants were not acting on the express authority or orders of the CP, which party they purported to represent in assassinating Mr

Hani. The CP has never adopted or espoused or propagated a policy of violence or the assassination of political opponents.

The CP was never aware of the planning of the assassination and only became aware thereof after the event. It never approved, ratified or condoned the assassination.

66. The Committee did not find it necessary to decide whether the phrase 'on behalf of' (in section 20(2)(a) of the Act) should be interpreted narrowly. This would have had the effect of confining the application of this phrase to cases where a person acted as a representative or agent of the relevant political organisation or liberation movement. The Committee held the view that, in any event, section 20(2)(a) 'does not cover perpetrators who act contrary to the stated policies of the organisation which they purport to represent'. As the assassination of political opponents was contrary to the stated policies of the CP, the applicants had failed to comply with the requirements of section 20(2)(a) of the Act.
67. With reference to section 20(2)(d) of the Act, the Committee found that, in assassinating Hani, the applicants were not acting within the course and scope of their duties or on the express authority of the CP. This was confirmed by the evidence tendered by the leader of the CP, Mr Ferdi Hartzenberg, and by the applicants themselves.
68. In respect of section 20(2)(f), the Committee rejected the argument that the applicants had any 'reasonable grounds' for believing that, by assassinating Hani, they were acting in the course and scope of their duties, or within the scope of their express or implied authority.
69. Finally, the Committee found that both Derby-Lewis and Walus had failed to make full disclosure (as required by section 20(1)(c)) in respect of a number of 'relevant and material issues', identified by the Committee as follows:
 - a the purpose of the list of names and addresses found in Walus' apartment after his arrest and on which Hani's name and address appeared;
 - b the purpose for which the names on the list were 'prioritised';
 - c the purpose for which the Z88 pistol (the murder weapon) was obtained and fitted with a silencer; and
 - d whether or not Walus, in assassinating Hani, was acting on the orders or instructions of Derby-Lewis.

The applicants' challenge

70. The applicants challenged all the above grounds provided by the Committee in refusing amnesty, and argued that its decision should be reviewed and set aside on the grounds that they had complied with all the legal requirements for amnesty. They argued that the Committee had misinterpreted section 20(2)(a); that the Committee had failed to follow the correct interpretation of section 20(2)(a) as established by other (differently constituted) amnesty committees in previous decisions where amnesty had been granted (such as the murder of Ms Amy Biehl and the St James' Church attack); that the Committee had misdirected itself both in fact and in law in its interpretation of section 20(2)(f), and that its findings in respect of these subsections were not justifiable in relation to the reasons given for them. The case of Mr Koos Botha, a CP member of Parliament who planted a bomb at a school, was cited. Mr Botha had been granted amnesty for purely political objectives because he 'had interpreted the public utterances of the CP leaders as a call to violence'.
71. With regard to the question as to whether or not Walus had acted on the orders of Derby-Lewis, they claimed that the Committee had erred in law by setting a higher standard than the Act required, because it had elevated the criterion or consideration set out in section 20(3)(e) of the Act to the status of a substantive requirement for amnesty in the context of section 20(1).
72. With the exception of the purpose for obtaining the pistol and silencer, the other issues identified as relevant facts for purposes of section 20(1)(c) were not relevant facts required to be disclosed fully by the applicants in order to qualify for amnesty.
73. Even if the issues referred to above, or only some of them, were relevant facts for the purposes of section 20(1)(c), the decision of the Committee in respect of each of these issues was not justifiable (objectively rational) in relation to the reasons given for them.

The decision of the court

74. The full bench of the High Court decided that the questions to be decided were whether there was any merit in the applicants' main points of argument. The court considered all the evidence that had been presented before the Committee, as well as the arguments by all the parties, and analysed the various provisions of section 20 of the Act in considerable detail. The court's main findings were as follows:

75. The court held that the established principles of interpretation should be applied in interpreting the provisions of section 20. Legislative purpose, as opposed to legislative intent, was only one of the principles to be applied. The court should not adopt a purely benevolent or a purely restrictive interpretation.
76. The fact that other amnesty committees had interpreted or applied section 20 in an incorrect way could not create a legitimate expectation that such an error, either of law or of fact, would be perpetuated by the court.
77. In respect of Section 20(2)(a), the court held that the applicants did not act on behalf of the CP, but that they had embarked on a terrorist foray of their own. Although the applicants said that they held the *subjective* belief that their conduct would advance the cause of their party, the court held that it should assess *objectively* whether it was reasonable for them to hold such a belief. The court concluded that the Committee had correctly rejected the applicants' contention that they fell within the ambit of this section.
78. In respect of section 20(2)(d), the Committee had correctly held that the applicants had not acted in the course and scope of their duties as members of the CP as required by this section of the Act, as assassination had never been one of Derby-Lewis' duties as a senior member of the CP. It followed that Derby-Lewis could not have shared a nonexistent duty with Walus; nor could he have delegated part of it to Walus. It also followed that assassination never formed part of Walus' duties.
79. In respect of section 20(2)(f), Derby-Lewis did not act, and could not have had any reasonable grounds for believing that he was acting, in the course and scope of his duties and within the scope of his authority in assassinating Hani. He was a senior ranking member of the CP, a parliamentarian and a serving member of the President's Council.
80. Walus was, however, in a different position, as he was a rank-and-file member who was entitled to assume that Derby-Lewis had authority to speak on behalf of the party. Walus could have made a case for such a proposition and this could have led to a closer evaluation of his (Walus') beliefs and the reasonableness of them. This was not, however, the case that he had made. Walus had stated in his original application that 'he had acted alone in the planning and commission of the deed'. Under cross-examination, he said that this was not true. He later amended his amnesty application to incorporate Derby-Lewis as his accomplice, insisting that this was the truth. Walus' version was that he believed that he had been assigned the assassination plan as an order from Derby-Lewis, given as a

result of his senior position within the CP or as part of his duties as a member of the party. The court found that this claim lacked objective credibility, and therefore Walus also did not meet the requirements of this section.

81. With regard to relevance and full disclosure, the evidence of the applicants in respect of the main issues (namely the purpose of obtaining the pistol and silencer, the purpose of the list of names and the prioritising of the names on the list) was generally improbable, contradictory and lacked candour. The Committee was correct in rejecting the applicants' evidence in these respects as being false and was, therefore, entitled to find that the applicants had failed to make full disclosure of all relevant facts as required by section 20(1)(c) of the Act.
82. In the result, the full bench dismissed the application with costs. Both Derby-Lewis and Walus subsequently brought an application before the same court for leave to appeal to the Supreme Court of Appeal. The court refused leave to appeal on the grounds that the applicants had failed to show that there were any reasonable prospects of success on appeal or that another court could come to a different conclusion on the same facts.
83. On 31 May 2001, the applicants filed a petition to the Chief Justice seeking leave to appeal. The petition was refused. The applicants have now exhausted all their available remedies in law.

APPEAL BY MEMBERS OF THE NASIONAL SOSIALISTE PARTISANE⁵³

84. Mr CJ van Wyk and Mr Pierre du Plessis applied for amnesty for a wide range of criminal offences, including the theft of a motor vehicle, three counts of murder, attempted robbery with aggravating circumstances, contravention of the Firearms and Ammunition Act, housebreaking with the intent to steal, theft, two counts of robbery and contraventions of the Explosives Act.
85. Mr van Wyk had been convicted and sentenced to life imprisonment, and Mr du Plessis had been sentenced to an effective twelve years' imprisonment. The applicants belonged to an organisation or movement called the Nasional Sosialiste Partisane (NSP). At the time of the acts for which amnesty was sought, this organisation had only four members, inclusive of the two applicants. The other two members died during a shootout with the police when the applicants were arrested.

⁵³ CJ van Wyk and P du Plessis v Komitee oor Amnestie; Saak Nr. 16602/99 (Transvaal Provinsiale Afdeling).

The facts

86. On 13 October 1991, the applicants and two others (deceased) travelled in a stolen vehicle to Louis Trichardt, where they planned to rob a household belonging to a Ms Roux. They believed that only a servant, a Ms Dubane, would be present. However, things did not go according to plan, and one of the others in their group shot and killed Ms Dubane and cut her throat. When Ms Dubane's husband appeared, he too was shot and killed and had his throat cut. Ms Roux tried to escape the attack by hiding in a cupboard, but she too was shot and killed and had her throat cut by one of the other members of the group (later deceased). Nothing was taken from the house, despite the fact that the group had been informed that there would be an R4 rifle and ammunition at the premises.
87. From Louis Trichardt the group proceeded to Oudtshoorn, where they planned to steal weapons from an army base. Here they obtained a quantity of arms, ammunition and explosives. They also broke into an army base in Potchefstroom, where they stole two R4 rifles. They fired shots at the soldiers in an attempt to kill them.

Amnesty decision

88. The Committee refused to grant amnesty to the two men for the following reasons:
89. First, the NSP was not a publicly known bona fide political organisation or liberation movement acting in furtherance of a political struggle waged against the state or any former state; nor was it a publicly known political organisation or liberation movement as required by the provisions of section 20(2)(a) of the Act.
90. Second, when they committed the acts for which amnesty was sought, the applicants had done so specifically in their capacity as members of the NSP. The fact that their objectives may have been similar to or the same as those of other recognised political organisations or liberation movements was irrelevant.

Court's findings on review

91. The High Court found nothing untoward in the reasoning of the Committee and dismissed the application for review with costs. The presiding judge, Mr Justice van der Walt, indicated that, although it was a tragic situation and one would possibly want to grant amnesty to persons of the calibre of the applicants, one could not do so because they had placed themselves beyond the pale of the provisions of section 20(2) of the Act, and that was solely their own doing.

THE DUFFS ROAD ATTACK: APPEAL BY MEMBERS OF THE ORDE BOEREVOLK⁵⁴

92. Mr David Petrus Botha and two other persons, Messrs Smuts and Marais, were convicted in the Supreme Court, Durban, on seven counts of murder, twenty-seven counts of attempted murder and one count of unlawful possession of firearms and ammunition. They were members of a right-wing group called the Orde Boerevolk. All three were sentenced to death on 13 September 1991. This sentence was subsequently commuted to 30 years' imprisonment.
93. On 9 October 1990, the applicants and their colleagues attacked a bus full of black commuters on Duffs Road, Durban, by shooting at them with automatic weapons. The reason they gave for the attack was retaliation for an incident that had occurred earlier that day, when a group of approximately thirty supporters of the Pan Africanist Congress (PAC) or APLA, wearing PAC T-shirts, had randomly attacked white people on Durban's beachfront with knives, killing an elderly person and injuring several others.
94. All three applied for amnesty and appeared before the Committee on 5 September 1997.
95. The Committee accepted that Orde Boerevolk was a recognised political organisation involved in a political struggle with the then government and other political organisations, and that their acts were associated with a political objective. In applying the additional criteria set out in section 20(3) of the Act, the Committee distinguished between the roles played by Mr Botha on the one hand and by Messrs Smuts and Marais on the other. The basis for the distinction was that Smuts and Marais were subordinates of Botha and were under orders to carry out the attack as members of the Orde Boerevolk. Botha, on the other hand, had received no order or instructions to carry out the attack; nor had his actions been approved by any one of his superiors or by the organisation.
96. For this reason, Smuts and Marais were granted amnesty. Botha was refused amnesty in respect of the charges of murder and attempted murder, but was granted amnesty in respect of the charges of unlawful possession of firearms and ammunition.

⁵⁴ David Petrus Botha v Die Voorsitter SubKomitee oor Amnestie van die Kommissie vir Waarheid en Versoening, Saak Nr. 17395/99 (Transvaal Provinsiale Afdeling).

97. Botha appealed to the Transvaal Provincial Division⁵⁵ against the Committee's refusal to grant him amnesty.

Review proceedings

98. The presiding judge, Mr Justice J Smit, held that the Committee had failed to consider properly whether the applicant's conduct in respect of the attack on the bus had complied with the requirements of section 20(3)(e) of the Act as to whether the 'act, omission or offence was committed in the execution of an order of, or on behalf of, or with the approval of, the organisation, institution, liberation movement or body of which the person who committed the act was a member, an agent or a supporter'.
99. The court also found that the Committee had misdirected itself in losing sight of the fact that the provisions of section 20(3)(e) were merely criteria to be applied to determine whether an act was committed with a political objective, and not requirements necessary for the granting or refusal of amnesty.
100. As a result of this, the court determined that it could interfere in the Committee's finding and made an order setting aside the refusal of amnesty and referring the matter back to the Committee to hear further evidence on this point.

Second amnesty hearing

101. On the 13 December 2000, Botha again appeared before the Committee and led evidence by the leader of the Orde Boerevolk, Mr Pieter Rudolph. This evidence did not take the matter any further as Mr Rudolph indicated that he would not have authorised the attack had he been asked to do so by the applicant and that, in any event, he had had no way of communicating with his supporters at the time as he had been in detention.
102. The Committee subsequently refused amnesty to the applicant on the same basis as before, namely that Botha had had no authority from his political organisation to launch such an attack on innocent and unarmed civilians.

⁵⁵ The name of this court still refers to the pre-1994 provincial arrangement in South Africa, as the complex process of restructuring the court system is still underway.

THE NAMIBIAN EXTRADITION CASE: APPEALS OF DARRYLE STOPFORTH AND LEONARD VEENENDAL⁵⁶

103. Because similar questions of law were raised in both these appeals, the Supreme Court of Appeal deemed it convenient to deal with them at one and the same time.
104. The court was constituted of five judges, namely Justices Mahomed, Olivier, Melunsky, Farlam and Madlanga. The only question raised in these appeals that affected the work of the Commission concerned the jurisdiction of the Committee to grant amnesty for offences committed by South African citizens outside the Republic. This matter was reported in Volume One⁵⁷ of the Commission's Final Report, where the facts are comprehensively set out.

Background to the appeal

105. In November 1996, the appellants launched motion proceedings in the Transvaal Provincial Division of the Supreme Court of South Africa. The proceedings were, amongst other things, for an order suspending the Minister of Justice's decision of 10 October 1996 ordering their extradition to Namibia, pending the adjudication by the Committee of their applications for amnesty – primarily for the killing of two persons during an attack on the United Nations Transitional Action Group (UNTAG) offices in Outjo on 10 August 1989.
106. The application was heard by Justice Daniels who came to the conclusion that the Commission (acting through the Committee) could not grant amnesty for deeds committed in Namibia, because it had no jurisdiction over crimes that had been committed in what was then South West Africa. The court also held that section 20 of the Act was not applicable, as Namibia could not be classified as a 'former state' of South Africa. He accordingly dismissed the application with costs.
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,

⁵⁶ Darryle Garth Stopforth v The Minister of Justice, The Truth and Reconciliation Commission (Amnesty Committee), The Government of Namibia, The Minister of Safety and Security: Case No. 317/97 (Supreme Court of Appeal of South Africa) and

Leonard Michael Veenendal v The Minister of Justice, The Truth and Reconciliation Commission (Amnesty Committee), The Government of Namibia, The Minister of Safety and Security: Case No. 316/97 (Supreme Court of Appeal of South Africa).

⁵⁷ p. 192.

ordered or committed within or outside the Republic against the state, or any former state or another publicly known political organisation (section 20(2)(a)).

108. According to the preamble to the Act, amnesty is to be granted in respect of acts, omissions and offences associated with political objectives committed in the course of the conflicts of the past. These conflicts must have sprung from South Africa's deeply divided society. The envisaged amnesty is intended to reconcile opposing South African people.
109. The court held further that the acts of the appellants committed in 1989 in what was then South West Africa were not part of the conflicts of the past as intended by the Act. Those acts were not directed against South African opponents in the context of South Africa's own past. Thus an internal conflict between groups in South West African society fell outside the jurisdiction of the Committee.
110. The appeals were accordingly dismissed.

THE 'MOTHERWELL FOUR'⁵⁸

111. Messrs Marthinus Dawid Ras, Wybrand Andreas Lodewicus du Toit, Gideon Johannes Nieuwoudt and Nicolaas Jacobus Janse van Rensburg each filed review proceedings against the refusal of the Committee to grant them amnesty arising from the murders of Warrant Officer Mbalala Mgoduka, Sergeant Amos Temba Faku, Sergeant Desmond Daliwonga Mpipa and Mr Xolile Shepard Sakati, aka Charles Jack, committed at Motherwell, Port Elizabeth, on the 14 December 1989. This matter became known as the 'Motherwell Four' amnesty application.
112. The applicants in the review proceedings were part of a group of nine amnesty applicants, including Messrs Eugene Alexander de Kock, Daniel Lionel Snyman, Gerhardus Lotz, Jacobus Kok, and Nicolas Johannes Vermeulen. All were former members of the security forces.
113. The four deceased were killed when the motor vehicle in which they were travelling was blown up by an explosive device that had been attached to it. They were all members of the Port Elizabeth Security Branch, except for Charles Jack, who was an askari (a turned ANC/MK member) and also on the Security Branch payroll.

⁵⁸ Marthinus Dawid Ras v The Chairman of the Amnesty Committee of the Truth and Reconciliation Commission: Case No. 7285/00 (Cape of Good Hope Provincial Division); Wybrand Andreas Lodewicus du Toit v Die Voorsitter Subkomitee oor Amnestie van die Kommissie vir Waarheid en Versoening: Saak Nr. 9188/00 (Cape of Good Hope Provincial Division); Gideon Johannes Nieuwoudt v Die Voorsitter Subkomitee oor Amnestie van die Kommissie vir Waarheid en Versoening: Saak Nr. 366/01: (Cape of Good Hope Provincial Division); Nicolaas Jacobus Janse van Rensburg v Die Voorsitter Subkomitee oor Amnestie van die Kommissie vir Waarheid en Versoening: Saak Nr. 4925/01 (Cape of Good Hope Provincial Division).

114. At the criminal trial, Nieuwoudt, Du Toit and Ras were convicted of murder, perjury and defeating the ends of justice, and sentenced to twenty, fifteen and ten years' imprisonment respectively. Lotz and Kok were acquitted, whilst De Kock, Snyman and Vermeulen gave evidence on behalf of the State and were, except for Vermeulen, granted indemnity against prosecution.
115. The motive for the killings was that the deceased were believed to have been involved in a breach of security. Nieuwoudt, who had been in charge of the group, had received an order from one of his superiors – one Gilbert – that the deceased should be killed to prevent them from disclosing information about the affairs of the Security Branch, as they had threatened to do.
116. Nieuwoudt sought the assistance of Van Rensburg, who approached De Kock at Vlakplaas to help with the assassination of the deceased. Du Toit and Kok from the Technical Division of the Security Branch, Pretoria, were to manufacture the explosive device. Snyman, Vermeulen and Ras were instructed by De Kock to assist as back-up should the planned explosion fail to kill the deceased, in which event they were to shoot them with (untraceable) Eastern Bloc weapons. An explosive device was fitted to a motor vehicle in which the victims would be driving when it exploded.
117. The Amnesty Committee refused amnesty to the other eight applicants on the following grounds:
- a Except for De Kock, the applicants were not found to be credible as witnesses. Their evidence was vague and somewhat contradictory regarding the motive behind the killing.
 - b The motive for killing the deceased was to prevent them from carrying out their threat of exposing the illegal activities of the security police. The deceased had made the threat because they were facing charges of fraud after having been involved in intercepting cheques and funds mailed to various trade unions and left-wing organisations. They were not killed for any political objective associated with the conflicts of the past, nor was the killing directed against any member or supporter of the ANC or any other publicly known political organisation as was required by the Act.
 - c With the exception of De Kock, the applicants had failed to make a proper and full disclosure of all relevant facts relating to their own participation in the assassination of the deceased.
 - d The killing of the deceased was wholly disproportionate to any objective that the applicants might have pursued. There was no reliable evidence to link the

deceased with the ANC or any other political grouping. There was, in fact, evidence from the applicants themselves that there was no good reason to doubt the loyalty of the deceased to the Security Branch.

118. As a result, the applications for amnesty were refused.
119. Each of the applicants contested the findings of the Amnesty Committee and were successful in their application in the High Court for the review of the Amnesty Committee's decision to refuse them amnesty. The High Court ordered that the Committee's decision be set aside and that the Minister of Justice reconvene an Amnesty Committee to hear the applications.

THE KILLING OF RUTH FIRST, JEANETTE CURTIS SCHOON AND KATRYN SCHOON⁵⁹

120. On 30 May 2000, the Amnesty Committee granted amnesty to Messrs Craig Michael Williamson and Roger Howard Leslie Raven for the killing of Ms Ruth First in Maputo on 17 August 1982 and of Ms Jeannette Schoon and her daughter Katryn Schoon in Angola on 28 June 1984.
121. It was common cause that Ruth First and Jeanette and Katryn Schoon were killed by bombs concealed in parcels that were addressed to them. Both Williamson and Raven were members of the Security Branch. The assassinations of the deceased were ordered, advised, planned and/or directed within the Republic of South Africa, while the explosion and resulting deaths occurred outside the borders of the Republic.
122. The Committee was mindful of the Stopforth and Veenendal judgment referred to above. It held that it had the necessary jurisdiction to hear these amnesty applications, despite the fact that the killings occurred outside the Republic.
123. After a protracted hearing, the Committee was satisfied that the following applied:
 - a The killings of Ruth First and Jeannette and Katryn Schoon were offences committed in the course of the conflicts of the past.

⁵⁹ Claire Sherry McLean N.O.; Shaun Slovo, Gillian Slovo; Robyn Jean Slovo v Amnesty Committee of the Truth and Reconciliation Commission, Judge Andrew Wilson N.O. (Chairperson) Craig Michael Williamson and Roger Howard Leslie Raven: Case No. 8272/00 (Cape of Good Hope Provincial Division).

- b The applicants were members of the Security Police and, as such, were employees of the state. They had acted within the course and scope of their duties and within the scope of their express or implied authority.
- c The offences were directed against publicly-known political organisations or liberation movements, namely the ANC and SACP and/or members or supporters of those organisations, and were committed bona fide to the objective of countering or resisting the struggle.
- d Katryn Schoon, aged six years, was tragically killed in the crossfire. Williamson testified that he had not expected the Schoon children to be with their parents in a military zone, but to have been in London at the time.
- e The evidence indicated that, although the Schoons and Ruth First were lecturing at their respective universities, they had not totally withdrawn from politics and were still involved in the liberation struggle waged by the ANC/SACP.
- f There was no evidence to support the allegation that Williamson acted out of malice towards the deceased. The Committee held that there was evidence that Williamson had received orders from his superiors to proceed with the letter bombs.
- g The killings of Jeannette and Katryn Schoon and Ruth First achieved their objective to shock, destabilise and demoralise the ANC/SACP. The acts were accordingly not disproportionate to their objectives.
- h The applicants had made a full disclosure of all relevant facts.

Review application

- 124. Following the granting of amnesty to both applicants, the Schoon and Slovo families launched review proceedings against the granting of amnesty. The Committee did not oppose the application and chose to abide by the judgment of the High Court. The various grounds for review may be summarised as follows:
- 125. First, the Committee had failed properly to consider the evidence relating to the applicants' knowledge of the Schoons' domestic arrangements abroad.
- 126. Second, the Committee had failed properly to consider the requirements of proportionality (as required by section 20(3)(f)) in the killing of a six-year-old child. Further, the Committee should have refused amnesty on the grounds that the statement that 'it had served the Schoons right that their daughter had been killed because they had used her as their bomb disposal expert' indicated personal malice or spite as contemplated in section 20(3)(ii).

127. Third, the Amnesty Committee had misdirected itself in finding that the Schoons were still engaged in political work, thereby justifying its conclusion that the bomb was sent bona fide with the object of countering or resisting the struggle within the meaning of section 20(2) of the Act.
128. Fourth, the sending of a letter bomb to kill the Schoons had not been act associated with a political objective, as the Security Police had already succeeded in driving the Schoons out of South Africa.
129. Fifth, there had been failure to make full disclosure in respect of a wide range of evidence given by Williamson and Raven. This related to the identification of the targets to whom the bombs were sent, the manner in which the bombs were packaged, the construction of the device itself, the involvement of General Petrus Johannes Coetzee and the precise role played by each of the applicants.
130. Similar objections were raised by the applicants in respect of the killing of Ms First.
131. The respondents (Williamson and Raven) had not, at the time of publication, responded to the allegations set out in the founding papers. As the Committee decided not to oppose the application, the interest of the Commission in this matter is limited. Both Williamson and Raven filed an exception to the review application on the basis that a review against the granting of amnesty in terms of section 20 was not permissible in law.
132. This matter had not yet been resolved and was still pending at the time of publication of this Codicil.

THE CASE OF BHEKUMNDENI QEDUSIZI PENUEL SIMELANE

133. Mr Simelane brought an application to the Cape High Court to review the Amnesty Committee's decision to refuse him amnesty. At the time of publication, this application was still pending and is currently being handled by the Ministry of Justice. (...p83)