

# Managerial Reports

## ■ LEGAL DEPARTMENT

### General introduction

1. The Legal Department's general responsibilities included the following:
  - a overall responsibility on a national level for all legal matters involving the Truth and Reconciliation Commission (the Commission) and its Committees, including advising the Commission and CEO on all matters legal;
  - b drafting legal opinions for the Commission in respect of the legal aspects of the work of its various Committees;
  - c reviewing all existing contracts and drafting new contracts on behalf of the Commission;
  - d preparing the Commission's responses and defence to legal challenges such as reviews of amnesty decisions;
  - e liaising with attorneys and counsel on behalf of the Commission and persons appearing before the Amnesty Committee;
  - f dealing with all industrial relations/disciplinary matters on behalf of Commission;
  - g interacting and liaising with the Ministries of Justice and Constitutional Development; Arts, Culture, Science and Technology; Transport; Defence, and Police Services in respect of a wide range of matters concerning their activities, arising from the investigations and hearings of the Commission, and
  - h overall responsibility for the legal assistance programme in terms of section 34 of the Promotion of National Unity and Reconciliation Act No. 34 of 1995 (the Act).

### Documentation Centre

2. The national legal officer was assigned the additional responsibility of managing, supervising and supporting the Commission's Documentation Centre. The Documentation Centre was responsible for the entire body of documentation and information within the Commission. The process included recording all information generated by the Commission on CD-ROM, audio and audio-visual tape, magnetic (audio) tape as well as hard copy. Documents archived by the Documentation Centre included the following:
  - a all the Commission's intellectual assets;

- b original human rights violations (HRV) statements and Investigative Unit working files;
- c amnesty applications;
- d amnesty decisions;
- e amnesty hearing material (bundles);
- f applications for reparation and rehabilitation;
- g submissions made to the Commission by a wide range of persons, agencies and institutions in accordance with the investigative hearings of the Commission in terms of section 29 of the Act;
- h news clips of all local, national international news and press releases;
- i the audio and video recordings of hearings, and
- j collections of posters, artefacts (paintings, statues, etc.), photographs, books, journals and police records.

### **Legal Assistance Programme**

3. In terms of Section 34 of the Act, persons who were required to appear before the Commission under a subpoena or notice were entitled to legal representation. The Commission, in conjunction with the Minister of Justice, therefore implemented a legal assistance program to assist indigent persons in obtaining legal assistance.
4. The Legal Aid Board was appointed as an agent of the Commission to administer and reimburse legal representatives for the work done in respect of the Commission's activities.
5. Whilst the normal criterion for qualification to obtain legal assistance was satisfaction of the means test, many people did not qualify, as their income exceeded the limit (sometimes not by very much). This operated unfairly against private persons who might be required to spend considerable time away from home or work with no financial relief for employment lost. The Commission then applied an 'in the interest of justice' test which allowed most people to qualify for legal assistance, and which was given to perpetrators as a matter of course.
6. As of December 1998, it became obvious that the Legal Aid Board's administration was unable to cope with the Commission's instructions. Many hearings were postponed at great cost to the Commission because attorneys had either not been properly instructed or not been paid outstanding fees. In addition, many attorneys had threatened to boycott the process unless payment

of outstanding legal accounts was made before they would accept new work or complete partly-heard matters. As a result, the Legal Assistance Programme was taken over and run by the Commission's Legal Department from August 1999. The agency agreement with the Legal Aid Board was consequently terminated.

7. In order to streamline the legal appointment process, all stakeholders such as state attorneys and Bar Councils (in all nine provinces) were consulted and notified of the new procedures, which entailed the following:
  - a The Legal Department was responsible for issuing the instructions to legal representatives in liaison with the administrative component of the Amnesty Committee.
  - b The Legal Department would negotiate fees (within the parameters of the Regulations published in terms of Section 34 of the Act) up front and confirm precisely the terms of the instructions before any work was undertaken.
  - c The Legal Department would make all necessary accommodation and travelling arrangements with legal representatives and witnesses in consultation with the administrative component of the Amnesty Committee.
  - d The Legal Department would scrutinise all accounts presented, corroborate with the Amnesty Committee, tax the account/fees and issue instructions for payment.
  - e In respect of security force personnel or liberation force members who were dealt with in terms of section 3(3) of the State Attorneys Act 1958, the Legal Department undertook to assist the state attorneys in assuming all the preliminary work in the preparation of a taxed find account for payment by them.

## **INFORMATION TECHNOLOGY (IT) DEPARTMENT**

### **General introduction**

#### ***Network (hardware, software)***

8. The Commission initially operated on a wide area network (WAN), which connected all the regional offices. When these offices were closed in September 1998, the WAN was discontinued and the Cape Town office continued to run on a local area network (LAN). Communication between the head office in Cape Town and the satellite offices occurred mainly by Internet. Each office had a stand-alone Internet computer. For security reasons, the LAN was not linked to the Internet.

9. The LAN consisted of workstations and heavy-duty printers connected together by an Ethernet network with a Windows NT server at the centre. The communication protocol was TCP/IP.
10. The workstations ran Windows 95 and the application software was Microsoft Office. The bulk of the office administration work was done using MS Word and the e-mail facility. In addition to Word, the researchers used the Excel spreadsheet to analyse trends in the data and to graph the results of their analysis. The Finance Department used AccPac for the financial and payroll transactions and the Standard Bank BEST system to pay accounts using the Internet.
11. In 2001, a software audit was launched to establish which software was being operated and whether all the software was licensed. This was necessary as there had been a complete staff turnover in the IT Department and there were few records indicating what software had been purchased at the outset of the Commission. After discovering that some software was being used unlicensed, the Commission applied for 'amnesty' during the Business Software Alliance (BSA) Truth or Dare campaign to legalise software. This ensured freedom from prosecution provided that the organisation legalised all its software within a given time frame.

## **Y2K**

12. In 1999, the Commission took precautions against the Y2K computer bug. Y2K cards were installed in all the computers, and patches were downloaded from Microsoft to fix the software. The Commission experienced no Y2K-related problems.

## **CD-ROM project**

13. A CD-ROM project was initiated to preserve the Commission's electronic files. These files were initially backed up onto magnetic tapes, which were deteriorating. All backed-up documents were copied onto searchable CD-ROMs to enable faster and more efficient access. Due to the high staff turnover, it was constantly necessary to refer to files created and research performed by former staff members.

## **Database development**

14. The database was a client-server relational database implemented using Oracle software, which is the industry-standard database technology for this type of

project. Users had a suite of programmes on their workstations. This connected them to the database engines so that they could, for example, register statements and amnesty applications, capture the contents of the violations, carry out complex searches on the data and extract data into spreadsheets. They could also print a variety of computer-generated reports, such as the content of statements or amnesty applications, corroboration carried out, letters of acknowledgement, perpetrator details, incident reports, as well as statistics for monitoring the performance of the information flow.

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.

## **Website**

16. The website (<http://www.truth.org.za>) was launched in 1996 as part of the Commission's media strategy. It contained all the transcripts of both HRVC and amnesty hearings, amnesty decision transcripts, press releases and news reports from the South African Press Agency (SAPA). It also contained an interactive Register of Reconciliation that users could sign.

## **MEDIA DEPARTMENT**

17. The Media Department was central to the planning of each and every amnesty hearing. The department would place advertisements in various newspapers and on various radio stations in order to contact victims and/or perpetrators on behalf of the Amnesty Committee before hearings. This work was performed mainly by the media secretary with the assistance of evidence leaders and analysts. The purpose of this practice was two-fold: it helped the Amnesty Committee locate individuals and also informed members of the public about future hearings.
18. The Media Department was the first source of information for journalists and members of the public with enquiries about the Commission and specific amnesty hearings. The department was also responsible for preparing statements about decisions published by the Amnesty Committee.

## **Interpreting at the Commission's hearings**

19. Although interpretation services were not a department of the Commission but were provided for by the Unit for Language Facilitation and Empowerment (ULFE) of the University of the Free State, they formed an integral part of the processes of the Commission and need to be reflected upon.
20. Section 11(f) of the Act stipulated that: '... appropriate measures shall be taken to allow victims to communicate in the language of their choice'. The hearings 'dramatised' the right of victims and those applying for amnesty to follow proceedings in their own language and of course the right to give testimony in their own language. To respect this, the Commission was compelled to institute a multilingual interpreting service with the applicable infrastructure.
21. In the early part of 1996, the Commission finalised an interpreting service agreement with the Language Facilitation Programme of the University of the Free State. This involved the recruitment, appointment and training of interpreters to manage the service. Technical support was provided by Giant Video Screens (Pty) Limited.

## **The value of interpreting at the hearings**

22. The Commission's hearings yielded an extensive word harvest, probably even more extensive than that of the Nuremberg trials. If it is taken into consideration that a simultaneous interpreter produces on average between 14 000 and 20 000 words a day in a meeting lasting six to seven hours, and that this production can be converted into fifty-six to ninety typed pages, the Commission's hearings have resulted in extensive word production. Since the commencement of the hearings of the Commission in April 1996, altogether 57 008 hours of hearings have been interpreted. Converted into days, this already amounts to approximately 7126 hearing interpreting days, which have yielded an interpreting volume of nearly a billion words, which can, in turn, be converted to in the region of 11 million or more typed pages!
23. The duration of interpreted procedures is normally multiplied between two to three times per interpreted language if one is using the current judicial consecutive interpreting system. It has been estimated that, had the Commission opted for consecutive interpretation, the hearings would have continued into the year 2020. Thus what may seem to some as an apparently 'unnecessary'

extravagance of spending financial resources on language (interpreting) reduced the total operating time of the Commission by more than five times. The contribution of the Commission to the interpreting industry in South Africa should not be underestimated. The extensiveness and continuous interpreting service required by the Commission, especially to previously disadvantaged communities, meant that interpreters had to be trained and employed simultaneously. The fact that different African languages were used so consistently and on such a scale, and that people were given the opportunity to tell their stories in their own language at such a highly regarded forum, was indeed an empowering experience.

24. While the vocabulary at HRV hearings was of a more general nature, amnesty hearings took place within a rather strict legal context. Here the interpreter had to have a firm grasp of legal jargon. Lacking the appropriate terminology, interpreters of African languages found the amnesty hearings and the section 29 hearings more difficult.
25. Among the variables involved at hearings of the Commission were the differences in narrative technique from victim to victim, language differences (metaphorically and idiomatically), and tempo and volume of speech.
26. Interpreting at the Commission was no easy task. Many of the freelance interpreters have commented that interpreting as such is not difficult. What made it difficult was the emotional component.
27. The ULFE's team of interpreters covered practically all possible language combinations of the eleven official languages. The statistics on the language combinations for the hearings yielded some interesting facts. (See Table 3 below.)
28. An Afrikaans service was provided at 70 per cent of the hearings. Of the African language services, the Xhosa, Zulu and Sotho services were used the most (respectively 31 %, 35 % and 46 %).

**Table 1: Breakdown of time interpreted at the Commission's hearings**

	HEARINGS INTERPRETED				ACTUAL TIME INTERPRETED			
	HRV	AMN	Sec 29	Total	HRV	AMN	SEC 29	TOTAL
<b>HOURS</b>	2792	11680	632	15104	10856	44456	1696	57008
<b>DAYS</b>	349	1460	79	1888	1357	5557	212	7126

**Table 2: Accumulated number of interpreters used at the Commission's hearings**

	HRV	AMN	SEC 29	TOTAL
TOTAL AMOUNT OF INTERPRETERS	373	1538	106	2017

**Table 3: Number of languages used at the Commission's hearings**

LANGUAGE	TOTAL LANGUAGE USAGE	PERCENTAGE OF TOTAL
AFRIKAANS	345	70 %
ENGLISH	495	100 %
NDEBELE	4	1 %
NORTHERN SOTHO	21	4 %
SOTHO	172	35 %
SWATI	14	3 %
TSONGA	18	4 %
TSWANA	62	13 %
VENDA	17	3 %
XHOSA	154	31 %
ZULU	229	46 %

## FINANCE DEPARTMENT

### General introduction

29. Section 46(2) of the Act as amended set out the financial duties of the Commission and provided for the appointment of a chief executive officer who would also act as the chief accounting officer. Thus the financial accountability for the Commission rested with the chief executive officer. Section 46(5) of the Act required the Commission to prepare an estimate of revenue and expenditure for each year of its operation using a format to be determined in consultation with the Audit Commission. Section 9(1) of the Act directed the Commission to determine remuneration allowances in consultation with the Ministries of Finance and Justice, as well as terms and conditions of employment of staff members who were not state employees.



30. In complying with the financial mandate as directed by the Act and interpreted by the Commission, the chief executive officer delegated managerial responsibility to the director of finance. One of the tasks of the director was to assist the Commission by preparing estimates of revenue and expenditure.

## **Operations**

31. The Finance Department consisted of a financial director, a financial manager, a facilities manager, two bookkeepers, four administrative clerks, two facilities clerks and a senior administrative secretary.
32. When the regional offices were scaled down to satellite offices in 1998 the bank accounts of those offices were closed and were managed from the national office. The national financial director reported to the Commission's chief executive officer. The financial director's activities were diversified to include support services, and the description of the portfolio changed to director of finance and support services.

## **Revenue**

33. The Commission's revenues were allocated as a separate line item in the budget of the Department of Justice and Constitutional Development, which was voted on and approved by parliament.
34. In addition, many international donor countries contributed financially to add value to the process. The Commission was initially under the impression that it could accept donations directly. Legal opinion provided by the state legal advisers, however, indicated that all donations received by the Commission had to be formally approved by the Department of State Expenditure through the Reconstruction and Development Fund.
35. As the Commission's work progressed, it became clear that it would not be able to complete all its work within the prescribed eighteen-month period or even after several further extensions. The result was that parliament approved an Amendment of the Act (Act 33 of 1998). The Amendment provided for the Committee on Amnesty to continue with its functions until a date determined by the President. This meant that the Commission had to approach the Department of Finance for additional funding.
36. The Department of Finance allocated R14 617 000 to the Commission of for the 1999/2000 financial year, based on the assumption that the estimated date for

the final closure of the Commission was set for the end of June 1999. However, the self-imposed deadline could not be met, and an amount of R8.5 million was then allocated to the Commission for the 2000/2001 financial year. Two additional amounts of R17 million and R4 681 million were allocated to the Commission to continue its work through the 2000/2001 financial year. An amount of R10 million was allocated to the Commission for the 2001/2002 financial year to wrap up the Commission's proceedings. This was based on the assumption that the Commission would have been dissolved by the end of September 2001. The President, however, determined 31 March 2002 as the date upon which the Commission would finally be dissolved. This left the Commission with the dilemma that no provision for additional funding had been made. A very welcome donation was made by the Ford Foundation for the finalisation of the Codicil to the Final Report. However, over and above the grant received, the Department of Justice had to be approached for making available additional funding to ensure the proper and smooth closure of the activities of the Commission. At the time of writing this report a final answer in this regard was still awaited from the Department of Justice and Constitutional Development.

37. The audit for the 2000/2001 fiscal year has been completed and will be tabled in parliament before the end of March 2002. Financial statements for the completed fiscal periods 1997/98, 1998/99 and 1999/2000 are attached as Appendices 1, 2 and 3. The financial statements for the 2001/2002 financial year had not yet been set before parliament at the date of publication of this Report. Generally speaking the Commission received very positive reports from the Auditor-General, especially for the 1999/2000 and 2000/2001 financial years. No major shortcomings were identified and in each report it was made clear that compliance with laws and regulations applicable to financial matters has occurred during each year reported on.

### **Problems encountered and measures taken**

38. The CEO/CAO, assisted by the finance and support services director and the rest of management, were guided by the Commission's fiscal policy. A few of the problems encountered in the Commission and the measures taken to solve them are listed below.
39. Ever conscious of the lack of funding and the fact that taxpayers' monies were utilised to fund the activities of the Commission, the CEO, management and the

finance department were constantly looking for and implementing mechanisms to effect savings. These measures proved to be effective and resulted in the Commission being able to fund many of its activities out of savings. Measures that were adopted included the following:

- a mechanisms to curb the expenses incurred as a result of the public hearings into amnesty applications;
- b proper co-ordination of arrangements relating to public hearings;
- c stricter control with regard to travel and accommodation expenses as well as the use of telephones and cellular phones, and
- d a structured and effective reduction in the staff complement of the Commission.

### **Satellite offices**

40. The regional offices of the Commission closed down on 30 June 1998. Satellite offices were then established in Johannesburg, Durban (Pinetown) and East London to co-ordinate work still to be done in the regions. These offices were staffed by a total of thirty-seven employees. An office administrator was appointed in each office to manage these offices and report to the CEO.
41. The main task of the satellite offices was to render support services to the reparation and rehabilitation and amnesty processes. The satellite offices also served to make the processes of the Commission more accessible to all South Africans, particularly victims.

### **Human resources**

42. All human resources-related activities were dealt with by the financial director assisted by the regional manager.
43. At its peak the Commission had 438 employees. By November 1998 this number had decreased to 188. From then on the total kept decreasing as a result of resignations and/or a so-called staff 'roll-out' The latter was to a large extent a direct result of budgetary constraints. The Commission's total staff complement for December 2001 was thirty-one and this number was reduced to nine employees for the months of January to March 2002.
44. Terminating a staff member's contract of employment was never easy. Although the CEO was of the opinion that government should accept some responsibility

for those individual staff members who have dedicated years of their lives serving the national process of truth and reconciliation, this view was unfortunately not supported by government. For instance, notwithstanding sincere requests to provide funding for an incentive bonus or some form of gratuity, government remained adamant that no funds were available. In order to see whether staff could be accommodated elsewhere when their contracts were terminated, various government departments were informed of the availability of competent workers. Unfortunately this was to no avail. At the time of writing this report there are still a number of former employees who have not yet been able to secure another job.

## **Handover of assets to the Department of Justice and Constitutional Development**

45. The Act provided for a committee to be responsible for overseeing the handover of the assets of the Commission to the Department of Justice and Constitutional Development. Although the committee was established during 2000, this process only really commenced during October 2001.
46. At the time of writing this report almost 99 per cent of the Commission's assets have been handed over to the Department of Justice and Constitutional Development. These assets include 339 computers, forty-two motor vehicles, seventy-two cellular phones and no less than 3094 pieces of office furniture and equipment.
47. In addition, 1330 linear metres of documentation, comprising amnesty-related documents, statements, video and audio collections and other miscellaneous documentation, were transported from Cape Town to Pretoria over a period of 6 weeks.
48. All documentation relating to reparation and rehabilitation that has been in the possession of the Commission was handed over to the President's Fund based in Pretoria. This Fund will also deal with issues relating to reparation and rehabilitation until such time as a permanent policy in this regard has been adopted by Government(...p756)