

# **The Truth and Reconciliation Commission: success or failure?**

by

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## **SUMMARY**

The South African Truth Commission was different to any other commission held in the past. The Commission had to balance the scales between a painful past and a peaceful future. The task in itself was not an easy one, considering the fact that the apartheid years spanned over many decades. It certainly was not an easy task to maintain a balance between blanket amnesty and legal prosecutions. This middle of the road policy leveled much criticism from all sides, ranging from political parties to victims and their families and the general public. However, the policy on amnesty was a crucial aspect in balancing the past with that of the future.

Although the TRC had achieved its objectives, it had many shortcomings ranging from its original mandate, its workings right through to the final recommendations. The scope of the Commission was far too wide considering the fact that they had to cover human rights abuses spanning over the years 1960 to 1994. The mandated period for them to complete their task was very limited if one considers the fact that this was a unique Commission and many people had to be trained to carry out tasks especially on lower levels. The Committees established by the Commission did not have clear methods of working and the coordination between them was poor.

The methodology followed by the TRC was flawed but we need to take time and consider the enormity of the task at hand. It was not only a transitional phase for the people of South Africa but for the new government as well. The TRC was not a well planned process. However one has to also consider that accountability had to be done as soon as possible or it would have lost its essence. Issues had to be faced as soon as possible.

The Commission also received criticism for allowing religion into its doors, mainly Christian theology. However, in some ways, one has to consider the fact that most people who were affected by apartheid were Christian and they found comfort in the practice of the Commission.

The National Party had to be accountable and yes, as leaders they should have apologized for what had happened. This should have been a point of issue for the Commission and one of the areas where they had failed to act.

Notwithstanding all the negative aspects of the Truth and Reconciliation Commission much positivism brought to the country as a whole, sections of society and to individuals. Nothing short of a miracle can heal a country. The terms of reconciliation, forgiving and healing became acceptable terms to many who were affected by the period of apartheid. South African history was given an opportunity to be recorded. People were given an opportunity to clear their conscious and find peace in truth. For the first time it was possible to see beyond the pain that many had suffered. As a country we would have been much poorer had the truth not been told. I believe it was truly a necessary part of our history.

**Key terms:**

Truth

Reconciliation

Apartheid

Commission

Healing

Reparations

Amnesty

Rehabilitation

Suffering

Restorative justice

Nation-building

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## ABBREVIATIONS USED IN TEXT

ANC	-	African National Congress
IDASA	-	Institute for a Democratic Alternative for South Africa
IFP	-	Inkatha Freedom Party
NP	-	National Party
PAC	-	Pan African Congress
TRC	-	Truth and Reconciliation Commission
UDF	-	United Democratic Front

# CHAPTER 1

## INTRODUCTION

The Truth and Reconciliation Commission (TRC) is a major milestone in South African history as it was part of the vehicle of transition between the past and the future of the new South Africa. It marked a turning point in the history of South Africa as a nation and its importance cannot be overlooked or negated. Numerous academic conferences and workshops, such as the Conference of the History Workshop and the Centre for the Study of Violence and Reconciliation, ‘The TRC: Commissioning the Past’, at the University of the Witwatersrand, Johannesburg, from 11-14 June 1999, were held to discuss aspects of its operations. It became the focus of international attention leading to thousands of reports. Even a film starring prominent actors were made about its activities. The film is titled *In my country* and is loosely based on Antjie Krog’s award winning book *Country of my skull*. The lead roles are played by Samuel L. Jackson and Juliette Binoche.<sup>1</sup>

That the activities of the TRC were important enough to warrant academic research is beyond doubt. This mini-thesis does not aim at analysing the TRC in all its dimensions. Its objectives merely are to take a critical look at the TRC, its shortcomings, the methods undertaken during its activities and also to accredit the positive aspects of the Commission in order to establish whether the Commission had achieved its objectives.

As pointed out by Annelies Verdoolaege of the University of Ghent in Belgium, the TRC has been the subject of a vast body of literature by a wide spectrum of writers.<sup>2</sup> Firstly, some of the Commissioners have written on aspects of the Commission. The chairperson, Archbishop Desmond Tutu, has covered the journey of the TRC from its beginning to the end in his book *No Future without forgiveness*. Alex Boraine and Piet Meiring also provided personal accounts of the TRC. Yesmin Sooka covers some aspects of the Commission in a conference paper and Wendy Orr wrote a personal account titled *Wendy Orr’s search for the soul of South Africa as a commissioner of the TRC*.

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<sup>1</sup> Du Preez, M., “Reflect on history through new eyes”, *Star*, 2005/06/30, p 22.

<sup>2</sup> Verdoolaege, Annelies, *The debate on truth and reconciliation: A survey of literature*, no page numbers. (Full citation of sources provided in source list at the end of the dissertation).

Various researchers from the Centre for Violence and Reconciliation and other institutions have analysed aspects of the politics surrounding the Commission. Graeme Simpson and Brandon Hamber are amongst the researchers who covered the TRC very extensively. Hamber is the former manager of the Transition and Reconciliation Programme at the Centre for the Study of Violence and Reconciliation. Well known authors such as Antjie Krog and Ludz van Dijk with Karin Chubb also cover aspects of the TRC. Krog gives a more personal but critical account in her book *Country of my Skull*. Her detailed accounts of some of the stories related at the hearings moves her readers to a higher level of understanding of South Africa's past. The TRC is also covered by various academics and theologians like Tom Lodge and Kenneth Christie. Tom Lodge's *Bus Stop for Everyone* devotes a section to the Commission. However he takes a very critical stand on the Commission and discusses only selected aspects of the TRC. Christie's book *The South African Truth Commission* covers the Commission in detail, looking at both positive and negative aspects of the Commission's activities.

The objective in this mini-thesis is to balance the views of the above and other commentators in an attempt to evaluate the success of the TRC. Both positive and negative aspects of the Commission are analysed in an attempt to reach an objective answer. Most sources seem to lack objectivity when answering the question whether the TRC was a success or a failure. The aims are to produce an objective account of the topic and to provide a holistic picture of the TRC.

The TRC was established as a means to an end, a way for the nation to begin the healing process after the demise of apartheid and an end to the suffering that many South Africans had endured. Whatever political motives the involved parties had, at the time of its establishment, it did not necessarily mean that the Commission was not good in itself. Firstly, it promoted a contentious period in the history of South Africa, namely the apartheid years, to be recorded as truthfully as possible, notwithstanding the fact that not all people were willing to come forward and testify at the commission. It nevertheless gave many individuals the opportunity to do so. Secondly the process of establishing the truth is an important aspect in any country's history, and the Commission aimed at this process, again notwithstanding that the process followed by the Commission was flawed. Lastly, it was an exercise to prevent any future gross human rights violations.



The concept of “reconciliation” is in this study measured in terms of the views of different authors. It is obvious that the term “reconciliation” had different connotations to people emerging from culturally and religiously different backgrounds. Forgiveness also played an essential role in the process of reconciliation and is measured in terms of its achievement.

In addition to this, the concept of truth is also linked to reconciliation. There is a difference of opinion as to whether the concepts of “truth” and “reconciliation” should be linked or not. Some writers are of the opinion that reconciliation cannot be reached without truth while others feel that the two concepts should be separated. The standpoint taken up in this study is that reconciliation can be reached without truth but that truth does play an important role in the process of reconciliation, and it is preferable that truth is revealed in order to reconcile. The degree of reconciliation would depend on whether there was truth or not in the whole process.

Was the Truth Commission necessary? There certainly are a large number of people who believe that it was and argue that it was necessary in order to come to terms with the past. There similarly exists a conviction that a commission of this nature was a necessary contribute to the healing process in South Africa. This idea is linked to restoring dignity to those who were allowed to tell their stories. The past could not simply be ignored. The willingness to face up to the past was in itself an achievement in South Africa’s history.

In this study each of the different committees established by the TRC and their work are discussed. Shortcomings are in all instances highlighted. The legalities of who was accountable for a particular act of violence often comes into question, e.g. who is guilty, the person who carried out the act of violence or the person who gave the order for the act to be carried out? In the same vein the question was repeatedly asked: which one of the two should be granted amnesty?

Attention is also given in this mini-thesis to the system used by the TRC to manage the whole process of truth finding as seen by the TRC. Linked to this are the different types of “truth” as viewed by different writers.

The limitation of the mandate of the TRC is analyzed, more so in respect of what the main focus of the Commission was. Included in the criticism of the TRC are aspects of flawed methodology; the request for truth; victims' statements; the need for objectivity and the fact that there was very little cross examination done during the process of truth finding. In addition, amnesty statements were not properly corroborated. To many writers, religion was intricately linked to the TRC, which should not have been the case. Also, in the eyes of many critics, apartheid's beneficiaries were not forced to submit to justice.

What it came down to was, could the unforgivable be forgiven? If that was so, why did the National Party refuse to apologize? This clearly seemed to defeat the purpose of establishing the Commission by the very negotiators of the same body.

Lastly, some positive aspects of the TRC are highlighted. There are many commentators who felt that the TRC had contributed to the healing process in South Africa. It gave people a voice to be heard and it was a vehicle to peaceful co-existence in South Africa.

## CHAPTER 2

### BACKGROUND TO THE TRC

#### 2.1 THE ESTABLISHMENT OF THE TRC

The TRC came about as a result of a number of developments both before and after the inauguration of the new dispensation in South Africa in April 1994. The first prominent individual to suggest the establishment of a truth commission was Kader Asmal, who later became a cabinet minister, in 1992. The ANC soon afterwards set up a number of internal commissions to investigate human rights violations that had allegedly taken place in its military camps. It furthermore called for the establishment of a commission to investigate human rights violations that had taken place in South Africa in the era of National Party rule. In 1994 the government of President Nelson Mandela introduced the Promotion of National Unity and Reconciliation Bill in parliament. This Bill was finally signed into law by Mandela on 19 July 1995 as the Promotion of National Unity and Reconciliation Act, and made provision for the establishment of the TRC.<sup>3</sup>

The objectives of the TRC at the time of its establishment were as follows:

To establish as complete a picture as possible of the causes, nature and extent of gross violations of human rights which occurred between March 1960 and December 1994.

To grant amnesty to people who disclose in full acts which they have committed which were associated with political objectives.

To establish the facts or whereabouts of victims of gross violations of human rights and to assist in restoring their human and civil dignity by giving them an opportunity to testify as to their experiences and by recommending various measures aimed at providing reparation and rehabilitation to victims.

To write a report which publicizes the work and findings of the Commission and contains a set of recommendations of measures aimed at preventing future violations of human rights.<sup>4</sup>

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<sup>3</sup> Verdoolaege, A., *The debate on truth and reconciliation: A survey of literature*, no page numbers.

<sup>4</sup> G. Newham, Truth and Reconciliation: Realising the ideals, *Indicator SA*, 12(4), 1995, p 4.

The TRC was charged, firstly, with awakening the new democracy's memory of its pain during the apartheid era and secondly, to grant indemnity from prosecution in the courts of law to the perpetrators of crimes, committed both by the defenders and enemies of apartheid in exchange for their full confessions of the evils they had committed or authorized. The indemnities were also to serve as inducements for full and true confession.<sup>5</sup>

However, there were families of the victims of apartheid's torturers and execution squads that refused to conform to this scheme. Far from evincing signs of unconditional forgiveness, they were embittered at the prospect of being denied retribution through normal legal channels and challenged the constitutionality of relevant sections of the Act which established the TRC. However, in July 1996, the Constitutional Court upheld the disputed legislation as being in accordance with those clauses in the constitution and even stressed the need for the truth to be brought to the fore.<sup>6</sup>

Matters became more complicated when some individuals who expected to be named as culprits at the TRC hearings began seeking indemnities from the Attorney General in exchange for promises to testify at court trials. The reason for this was attributed to the fact that guilty parties could not feel absolutely sure that they would obtain amnesty.<sup>7</sup>

According to Simpson, who is the Executive Director of the Centre for the Study of Violence and Reconciliation, the long term achievements and/or failures of the TRC in the building of a human rights culture as well as re-establishing the rule of law and popular confidence in credible institutions of post-apartheid South Africa, can only be properly evaluated in the years to come. These goals by definition are difficult to measure in the short term and remain intangible. According to Simpson, in order to understand and evaluate South Africa's TRC and extract significant lessons from it for other countries in transition, one has to analyze the unique prevailing political circumstances which gave rise to its establishment.<sup>8</sup>

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<sup>5</sup> Nuttall, S., Truth, Memory and Narrative, in Nuttall, S. & Coetzee, C. (eds), *Negotiating the past*, pp 46-47.

<sup>6</sup> Nuttall, S., Truth, Memory and Narrative, in Nuttall, S. & Coetzee, C. (eds), *Negotiating the past*, p 47.

<sup>7</sup> *Ibid*, p 47.

<sup>8</sup> G. Simpson, *A Brief Evaluation of South Africa's Truth and Reconciliation Commission: Some lessons for societies in transition*, p 1.

The history of the TRC is linked to the evolution of South Africa's negotiated settlement. An important aspect of this was that South Africa's transformation from authoritarianism and racism to a constitutional democracy happened through dialogue and not by revolution or force of arms. This transition was fundamentally different to the demise of Nazi Germany after the Second World War, where there was a clear victor after the conflict. The Allies were able to take occupation of Germany and impose their justice on the Nazi regime. Thus, in this case, those who committed gross violations of human rights could easily be forced to face punishment as dictated by the victorious party. The victors chose prosecutions as a primary mode of dealing with the past, not because they believed it to be morally right but more importantly because they were able to do so.

This was in direct contrast with the example of transition from military rule to democracy in Chile. When power was restored to an elected civilian government, General Pinochet (former head of the Chilean junta) still commanded sufficient power, particularly within the politically interventionist military to ensure that he remained in office as head of the armed forces. As a result of the strength and continued influence of the military, the new government was unable, except in a few cases, to bring charges against those who had been responsible for gross human right violations.<sup>9</sup> However, the new Chilean government did establish a Truth Commission in order to officially investigate, record and acknowledge human rights abuse under military rule. But those who were responsible for the abuses remained unpunished.<sup>10</sup>

If post-war Germany represents one extreme in the transitional justice policy choices (that of prosecution) and the Chilean experience represents the other end of the spectrum (that of blanket amnesty to those who committed gross violations of human rights), then Simpson acknowledges that South Africa occupies a position somewhere between these two extremes.<sup>11</sup>

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<sup>9</sup> G. Simpson, *A Brief Evaluation of South Africa's Truth and Reconciliation Commission: Some lessons for societies in transition*, p 1.

<sup>10</sup> Zalaquett, J., "Chile", pp 51-53.

<sup>11</sup> G. Simpson, *A Brief Evaluation of South Africa's Truth and Reconciliation Commission: Some lessons for societies in transition*, p 2.

It should be mentioned that the position represented by the TRC was a response to the last minute compromise struck so late in the negotiation process that it had to be included in a “postamble”, which was tacked on to end of the constitution.<sup>12</sup>

This postamble is so important in the context of the topic of this mini-thesis that it is quoted here *in toto*:

This Constitution provides a historic bridge between the past of a deeply divided society characterized by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence and development opportunities for all South Africans, irrespective of colour; race; class; belief or sex.

The pursuit of national unity, the well-being of all South African citizens and peace require reconciliation between the people of South Africa and reconstruction of society.

The adoption of this Constitution lays the secure foundation for the people of South Africa to transcend the divisions and strife of the past, which generated gross violations of human rights, the transgression of humanitarian principles in violent conflicts and the legacy of hatred, fear, guilt and revenge.

These can now be addressed on the basis that there is a need for understanding but not vengeance, a need for reparation but not for retaliation, a need for *ubuntu* but not victimization.

In order to advance such reconciliation and reconstruction, amnesty shall be granted in respect of acts, omissions and offences associated with political objectives and committed in the course of the conflicts of the past. To this end, Parliament under this Constitution shall adopt a law determining a firm cut off date, which shall be a date after 8 October 1990 and before 6 December 1993, and providing for the mechanisms, criteria and procedures, including tribunals, if any, through which such amnesty shall be dealt with any time after the law is passed.

With this Constitution and these commitments we, the people of South Africa, open a new chapter in the history of our country.<sup>13</sup>

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<sup>12</sup> Meiring, P., *Chronicles of the Truth Commission*, p 11.

## 2.2 WHAT IS RECONCILIATION?

The *Concise Oxford Dictionary* states that the concept reconcile means to:

“make friendly again after an estrangement.

... [To] make acquiescent or contentedly submissive to (something disagreeable or unwelcome).

... [To] settle (a quarrel etc.).

... [To] harmonize; make compatible. ...”<sup>14</sup>

Kader Asmal, who is a former South African Minister of Education, makes it clear that reconciliation was neither an escapist flight from the facts, nor an arrival at jetty-built consensus through the avoidance of debates and accountability. It was the facing of unwelcome truths in order to harmonize incommensurable world views so the inevitable and continuing conflicts and differences stand at least within a single universe of comprehensibility.<sup>15</sup>

Since the inception of the TRC, Colvin, who is post graduate student in the Department of Anthropology at the University of Virginia (in the United States), explains that the twin projects of “healing” and “reconciliation” had gained importance as key elements of a particular model of socio-political transformation being articulated in South Africa. An emphasis on the ideals of healing and reconciliation formed the focus of much of the TRC’s self-presentation.

The government’s support for the TRC and the media’s representation of its work, provided both the impetus and the model for many of the parallel and subsequent projects in civil society that have tried to add to, complement, extend and critique the work initiated by the TRC.<sup>16</sup>

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<sup>13</sup> G. Simpson, *A Brief Evaluation of South Africa’s Truth and Reconciliation Commission: Some lessons for societies transition*, p 2.

<sup>14</sup> R.E. Allen (ed), *Concise Oxford Dictionary*, p 1003.

<sup>15</sup> *Ibid*, p 46.

<sup>16</sup> C. Colvin, *We are still Struggling: Storytelling, Reparations and Reconciliation after the TRC*, p 2.

According to Colvin, there are a number of ways one might chose to interpret what reconciliation is, what its various dimensions and conditions are, who it involves and also what kind of changes and processes it describes.<sup>17</sup> Colvin also mentions that there are also some common concepts associated with reconciliation. Forgiveness is one of these concepts and is a very necessary part for any lasting reconciliation and psychological well being. But it does not necessarily mean that violations would be forgotten.<sup>18</sup>

Antjie Krog, who is a poet and journalist, maintains that the word “reconciliation” was most often used by Afrikaner politicians and although we might expect them to use it as a cover up for their fear of being held responsible for the country’s shameful past, they mainly prefer to use it as a threat: “give us what we want, or we won’t reconcile with a black government”.<sup>19</sup> She believes they used reconciliation to dictate their demands.<sup>20</sup>

Krog pointed out that “reconciliation” in the dictionary has an underlay of restoration, of re-establishing things in their original state but in this country, there is nothing to go back to and no previous state or relationship one would wish to restore. She believes that the word “reconciliation” was not the right word, instead the word “conciliation” should have been used. She furthermore explained that Archbishop Desmond Tutu’s reconciliation theology tied in with the classical definition of reconciliation and adds that academics believe that reconciliation has formed an integral part of Tutu’s theological thinking since 1979. But also that Tutu has “Africanized” the concept in such a unique way that it shows up the usual western Christian motive for reconciliation as sometimes being too far removed from the world to be of value. Tutu is quoted as saying: “God has forgiven thus so should humans and if one lives with hatred and revenge, one does dehumanize oneself and ones community.”<sup>21</sup>

Krog goes on to point out that there may be a contradiction between the versions of reconciliation propagated by Tutu and by President Thabo Mbeki. Whereas Tutu believes that black people have the ability to do good things that surpass cold logic, his main thrust is that of reconciliation between people of all colours, embodied in his concept of the

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<sup>17</sup> C. Colvin, *We are still Struggling: Storytelling, Reparations and Reconciliation after the TRC*, p 26.

<sup>18</sup> *Ibid*, p 38.

<sup>19</sup> A. Krog, *Country of my Skull*, p 109.

<sup>20</sup> *Ibid*, p.109.

<sup>21</sup> *Ibid*, pp 109-110.



rainbow nation.<sup>22</sup> Mbeki on the other hand only really wants reconciliation through black people working together. Krog refers to Mbeki's concept of "African renaissance" and explains that he wants to prove that black people can run a country successfully and that reconciliation for him realistically, should take place among all black people with white people in peaceful co-existence. Krog in a compromise between Bishop Tutu's idea of reconciliation and that of President Mbeki, points out that for Tutu, reconciliation is the beginning of a transformation process whereas for Mbeki it is a step that can follow only after total transformation has taken place.<sup>23</sup>

Piet Meiring is of the opinion that it was naïve to believe that once we welcome truth at the front door that reconciliation would slip in through the back door of its own accord. For reconciliation, humility was necessary. Reconciliation is part of responsibility and restoration. Every individual, every group, denomination and religion was responsible for reconciliation, especially the churches and religious authorities.<sup>24</sup>

Jose Zalaquett told South Africans in attendance at an IDASA conference that reconciliation could be achieved either through punishment of wrongdoing or its forgiveness but suggested that forgiveness was the morally superior option. However, forgiveness could only be extended if the wrong is known and there is acknowledgement and atonement. The perpetrator should also resolve never to repeat these actions and reparations have to be made. Both reconciliation and forgiveness must be based on the truth.<sup>25</sup>

Frederik van Zyl Slabbert, who is a businessman, political consultant and lecturer, believes that the idea that truth leads to reconciliation is absurd, however, truth is a precondition for reconciliation. He states that, in many cases, legally and technically accountable truth has led to revenge, hatred and retribution. Confessional truth, he claims, is a bit better but can be neither necessary nor sufficient. Slabbert argues that the assumption that truth leads to reconciliation or that it is a necessary prerequisite is based on sentimental theological assumptions that very often bear no relation to reality.<sup>26</sup>

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<sup>22</sup> A. Krog, *Country of my Skull*, p. 110.

<sup>23</sup> *Ibid*, pp. 110-111.

<sup>24</sup> P. Meiring, *Chronicle of the Truth Commission*, p 378.

<sup>25</sup> Zalaquett, J., "Why deal with the past?", p 11.

<sup>26</sup> F. van Zyl Slabbert, *Truth and Reconciliation, Reconciliation without truth*, pp 69-70.

Slabbert believes that there can be reconciliation without truth. Slabbert compares South Africa to commissions in Chile and Spain and argues that there is no evidence that these countries could be better reconciled if they also held commissions such as South Africa's. Yet, he believes that reconciliation is necessary, however it will take years if not decades.<sup>27</sup>

Alex Boraine who was formerly Vice-Chairperson of the TRC, feels that speaking of reconciliation as though we can live in total harmony is absurd. The essence of politics, he argues, is based on different points of view, different cultures, values and different arguments, so reconciliation should be seen as an exchange of ideas in a climate of mutual respect and peaceful co-existence. What is important to Boraine is the question of individual reconciliation and that is something that South Africa should work towards. However, he maintains that it will not happen throughout society.<sup>28</sup>

Boraine argues by posing the question: can a nation confess, repent, make restitution, seek forgiveness, and be healed?<sup>29</sup> He does not think this possible, however, the onus is on the leaders of nations to apologise symbolically and then move forward. Leaders often miss the opportunity to lead a nation towards a deeper sense of reconciliation.<sup>30</sup>

According to Brandon Hamber it was a mistake and simplistic to assume that truth telling, public testimony and confession would lead to reconciliation. The TRC should have said that truth is just one component of reconciliation and transformation. The government had through the TRC shown a willingness to deal with the past and shown a broader commitment to transformation through compromise. But many individuals could not make the same commitment since their process of healing would not have coincided with national or collective strategies such as the TRC. Thus, the interest of the nation had been placed before those of the individual to ensure stability. Even though this pragmatic approach was unavoidable, the impact on the individual could not be ignored.<sup>31</sup>

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<sup>27</sup> F. van Zyl Slabbert, *Truth and Reconciliation, Reconciliation without truth*, p 70.

<sup>28</sup> A. Boraine, The Language of Potential, in W. James and L. van der Vijver (eds), *After the TRC, reflections on truth and reconciliation in South Africa*, pp 76-77.

<sup>29</sup> *Ibid*, p 77.

<sup>30</sup> *Ibid*, p 77.

<sup>31</sup> B. Hamber, Who pays for peace? Implications of the negotiated settlement for reconciliation, transformation and violence in a post-apartheid South Africa, p 10.

Kaizer Nyatumba who is editor of the *Daily News* in Durban, agrees with Boraine that we have had wonderful examples of reconciliation taking place but unfortunately this has not found resonance across the country and that South Africans are not anymore reconciled now than they were before the inception of the commission. Nyatumba believes that the TRC had been a misnomer. According to him, the IFP and NP believed that the TRC was an attempt to discredit them and that the best way of dealing with the past would have been to front blanket amnesty to all those who participated in the conflict. They also believed that the commission was largely biased in favour of the ruling party in terms of its own position and the manner in which it conducted itself. This was backed by the unfortunate decision by the TRC's Amnesty Committee Commission grant blanket amnesty to 37 ANC and ANC aligned individuals among them Trevor Tutu, the son of the TRC chairman.<sup>32</sup>

### 2.3 WHY SHOULD WE FACE THE PAST ?

According to Asmal, the recording of the pain of the past is important so that a unified nation could call upon it as a galvanizing force in the tasks of reconstruction.<sup>33</sup> South Africa as a new democracy needed a self-critical vision of the goals of our society which in turn required a clear-sighted and well debated grasp of what was wrong in the past.<sup>34</sup> South Africa had to hold up a mirror to the old protagonists of apartheid, passive and active, to show them their actions in the light in which they were seen by the majority of people in South Africa and abroad.<sup>35</sup>

Also, the victims of apartheid needed acknowledgment from the perpetrators and the beneficiaries. They required a collective renunciation by society of apartheid. Asmal predicted that the process of collective memory of the past would move us towards a number of crucial goals, which he listed as:

It will provide a basis for a collective acknowledgment illegitimacy of apartheid.

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<sup>32</sup> K. Nyatumba, "Neither Dull nor Tiresome", in W. James and L. van de Vijver (eds), *After the TRC, reflections on truth and reconciliation in South Africa*, pp 90-91.

<sup>33</sup> K. Asmal *et al.*, *Reconciliation through truth*, pp 4-5.

<sup>34</sup> *Ibid*, p 6.

<sup>35</sup> *Ibid*, p 9.

It will enable us to achieve a measure of justice for the victims of our horrific past by acknowledging the atrocities they suffered.

It will facilitate the building of a culture of public ethics for the first time in South Africa and it will make room for genuine reconciliation.

It will provide a basis for the necessary decriminalization of the anti-apartheid resistance.

It will ensure a sound basis for corrective action in dismantling the apartheid legacy.

It will lay bare the roots of violence that still plague parts of the country.

It will illuminate the long-standing humane values of the anti-apartheid resistance, for so long distracted by apartheid protagonists.

It will demonstrate the morality of the armed struggle against apartheid.

It will establish and underpin a new equality of all citizens before the law.

It will place property rights on a secure and legitimate footing for the first time in our nation's history.

It will enable privileged South Africans to face up to collective understanding and therefore responsibility for a past in which only they had voting rights.

It will offer acknowledgement of the wrong done to the countries of Southern Africa in the name of our country.

It will clarify the important international implications of apartheid in the past and present, as well as acknowledging of international mobilization against apartheid and

Finally it will allow for a necessary process of historical catharsis as the previously excluded speak out at last for themselves and the privileged caste joins the South African family for the first time.”<sup>36</sup>

Asmal is convinced that facing the past is the cornerstone of reconstruction and not merely a horror story exercise in historical voyeurism.<sup>37</sup>

The Minister of Justice, Dullah Omar, agreed with Asmal that the commission had to be established in order for South Africa to come to terms with its past. The Commission had to seek healing and reconciliation through acknowledgment of the truth. There was a need

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<sup>36</sup> K. Asmal *et al.*, *Reconciliation through truth*, p 11.

<sup>37</sup> *Ibid*, p 11.

for understanding but not for revenge, reparation not retaliation, a need for *ubuntu* (that which renders you human) but not victimization.<sup>38</sup>

A second idea that commissioners in the South African TRC had to work on was the compassionate form of restorative justice in accordance with *ubuntu* and popular moral beliefs. The commission explained in its report that restorative justice redefined crime as wrongdoing against people rather than a violation of the state and instead of punishment it emphasized restoration of both the victim and perpetrators while the authorities facilitated the conflict resolution between the two. According to Lodge, who is an author and political scientist at the University of the Witwatersrand, this judicial shift from confrontation to conciliation would represent a revival of traditional African values, especially those associated with the concept of *ubuntu*.<sup>39</sup>

According to Omar, the ANC government committed itself to break from the past to heal the wounds of the past, to forgive but not forget and to rebuild a future based on respect for human rights, hence the setting up of the TRC.<sup>40</sup>

Piet Meiring, a prominent theologian at the University of Pretoria, believes that it was important to battle through this painful process and that the books had to be opened in order to be properly closed. The victims needed to have the truth told as it was as important as justice. This was a prerequisite for reconciliation. As for the rest of South Africa, it was equally necessary that the ghosts be exposed and dealt with and be exorcised once and for all. South Africa had to mourn in order to heal.<sup>41</sup>

Anthea Jeffery, who is a special research consultant to the South African Institute of Race Relations, believes that knowing the truth would have value in itself and a common understanding of the conflict of the past would help lay the foundation for racial and political reconciliation.<sup>42</sup>

According to Hamber the purpose of the TRC was to facilitate a truth recovery process that was aimed at reconciliation with the past. This process of reconciliation had to occur by

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<sup>38</sup> Quoted in Boraine, A. & Levy, J. (eds), *The healing of a nation?*, pp 4-5.

<sup>39</sup> T. Lodge, *Bus stop for everyone*, p174.

<sup>40</sup> K. Asmal *et al.*, *Reconciliation through truth*, p 11.

<sup>41</sup> P. Meiring, *Chronicles of the Truth Commission*, p 376.

<sup>42</sup> A. Jeffery, *The truth about the truth commission*, p 1.

establishing a complete picture of the causes, nature and extent of past human rights abuses in South Africa. The victims of these abuses had to be located and allowed to relate their stories so as to restore their human dignity. Thereafter, the TRC aimed to make amends to these individuals through the granting of reparations and rehabilitative measures. Also, the TRC intended to enhance reconciliation by granting amnesty to perpetrators of human rights abuses who fully disclose the political crimes they committed. Lastly the TRC also had to complete a comprehensive report of past abuses and make recommendations as to how such events could be prevented from happening again. The TRC process also intended to serve numerous social and legal functions, like the re-establishment of the rule of law, the building of faith in institutions that have been discredited in the past and the restoration of a human rights culture in South Africa.<sup>43</sup>

Hamber believes that the past can never be ignored psychologically, as past traumas can always be expected to have emotional consequences for a person. Repressed pain and trauma can block an individual's emotional life and have psychological adverse consequences which could even lead to physical symptoms. In order for psychological restoration and healing to take place, survivors needed to be provided the space to feel heard and for every detail of the traumatic event to be re-experienced in a safe environment. Individual and collective emotional response to trauma generally could have a significant cognitive impact. Hamber quotes Janoff Buman's argument that trauma and violence shatters individual cognitive assumptions about the self and the world. The individual's cognitive assumptions of personal invulnerability, viewing oneself and the world positively can be seriously altered by severe forms of trauma. These distortions would result in post-traumatic stress phenomena. Of primary importance for the victim would be the cognitive appraisal of the event, as extreme forms of trauma can also destroy individual and social trust and transform survivors into emotional strangers alien to the story they would not even recognize as their own. By creating an accurate picture of the past, Hamber predicted that the TRC could liberate individuals and broader society from a slaved view of humanity constructed around the inhuman legacy of South African society. Also, survivors would be helped to accept what has happened to them if a realistic perspective of past human rights abuses is created. This would assist in individual and collective cognitive recovery. In this way, survivors will also be able to deal with their

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<sup>43</sup> B. Hamber, *Do Sleeping Dogs Lie?*, p 1.

resultant emotional responses. Acknowledgement and uncovering the roots of the traumatic incident could also serve to get rid of the feelings of guilt and personal causal responsibility that survivors often experience after a traumatic event.<sup>44</sup>

However, Hamber explained that on an individual level a person can only forget what he or she has lived through if every detail of the traumatic event is experienced and the TRC could in a limited way facilitate this process through the testimony giving process. Giving testimony allows re-living and building a context of meaning for survivors which can serve the cognitive function of re-shaping the event for the survivor and also allow for the individual's feelings to be dealt with. Also, the event gets integrated into the cognitive and emotional matrix of the survivors' life. Giving testimony also affirms the locus of control as lying outside the individual and thus provides means for regaining status as a social being.<sup>45</sup>

Hamber warns against a culture of silence. He quotes Danceli's terms "a conspiracy of silence", which is an additional consequence of political violence and turmoil. Hamber explains that misinformation and what he terms the "official story" are often the hallmark of past repressive societies. The state repression comes about when there is difficulty in distinguishing between what is true and untrue. Also, individuals became reluctant to talk because of fear of reprisal. The wish to expose the truth and deal with the past can be counteracted by the individual's internal desires for it to be ignored or untouched. This however, can be bad for the individual in the long run as it could result in the individual being excluded from social, emotional and political life. Survivors thus would feel that no one is willing to hear their story. Thus, the process of truth recovery can be instrumental in contributing to the psychological rehabilitation of a person by breaking the culture of silence.<sup>46</sup>

Reparations, rituals and commemorations can play an important role in any process of healing, bereavement and addressing trauma. They allow individuals to focus exclusively on their grief and to share their feelings with others. Symbolic representation also help, particularly if the symbols are personalized, they serve a psychological restorative

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<sup>44</sup> B. Hamber, *Do Sleeping Dogs Lie?*, p 3.

<sup>45</sup> B. Hamber, *Do Sleeping Dogs Lie?*, p 4.

<sup>46</sup> *Ibid*, p 4.

function. The reparations granting process can facilitate a process of coming to terms with the traumatic event and symbolize an individual's mastery over it.<sup>47</sup>

The TRC could also have served the functioning of a healing ritual which follows the process of specifying the trauma, reliving its effects, developing personalized symbols, performing symbolic acts of parting with the past and the performance of symbolic acts of becoming something new. This had to be done by the TRC, firstly, specifying the trauma and reliving its effects through a structured truth recovery process and by survivors giving testimony. Secondly, the TRC itself could symbolically represent a collective willingness to deal with and part from the past trauma. Lastly, the TRC had to make recommendations and implement and develop institutional apparatus for preventing the re-occurrence of human rights violations. In this way the TRC could symbolically and concretely represent the process of "becoming something new".<sup>48</sup>

In addition, the reparations process followed by the TRC could also be seen as a rehabilitation process. Although monetary value can never address the trauma experienced by both victims, survivors or their families, but by focusing on rehabilitative measures, such as free schooling and medical aids for survivors or the dependants of victims, could make amends. This could serve the psychological process of concretizing the event and symbolically acknowledging the individual's suffering. It is not the physical reparation that is important but the process of amending, recognizing and acknowledging.<sup>49</sup>

Hamber argues that in the absence of full disclosure and public knowledge of past human rights abuses, the inherited institutions of the new government would have retained the culture of clandestine, unaccountability and covert activity which shaped their operations under apartheid. The intention to substitute truth recovery for retributive justice is intended to assist in leaving an undisputed account of history and to document how violations occurred. This would open up the possibility of learning from the past and in doing so ensuring that future violations does not occur.<sup>50</sup>

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<sup>47</sup> B. Hamber, *Do Sleeping Dogs Lie?*, p 4.

<sup>48</sup> *Ibid*, p 5.

<sup>49</sup> *Ibid*, p 5.

<sup>50</sup> B. Hamber, "Dr Jeckyll and Mr Hide": *Problems of violence and reconciliation in South Africa's transition to democracy*, p 8.



But can “knowing the truth” in fact be transferred by the government, the TRC and civil society into a means of preventing future violence? Hamber states that this is a multi-faceted issue, mainly because the prevention of future political violence by means of mechanisms like the TRC is interwoven with the structural circumstances of the testifying. The majority of the victims who appeared before the TRC were victimized not only because of their political affiliations and activities but also because of their structural circumstances including their race, poverty, gender and their general social marginalization. Hamber maintains that these marginalized groups run the risk of being re-victimized because of their sustained social standing. Black South Africans, due to their structural position in society remain the most likely victims of violent crime.<sup>51</sup>

However on an individual level, acknowledgement, reparations, apologies and material improvement can never bring back the dead or wipe away all levels of psychological pain suffered by a survivor. Survivors needed to come to terms with their grief and losses and even though the TRC had been a catalyst for successful resolution, in some cases or in most cases, survivors were not ready to put the past behind them after testifying at the TRC. This could have lead survivors to feel that they were pawns in the process of reconciliation: their poverty ignored, but their voices used to make sure that stability reigns and a consolidation of power took place. Hamber even goes as far as stating that the poor could have even erroneously ascribed their ongoing difficulties to the TRC, as the most visible element of the new government’s strategy for reconciliation. They could also blame the inadequacies of the TRC’s reparations policy for their poverty. Hamber saw this as a paradox since it could have served to deflect attention away from the shortcomings of macro-economic policy and channel frustrations against the TRC, which was supposedly independent from government.<sup>52</sup>

Hamber saw that the TRC process as collectively necessary but not sufficient for the individual.<sup>53</sup> However, the TRC should not be expected to address the structural inequalities in South African society. Hamber states that any Truth Commission was doomed to failure if it is the exclusive vehicle of reconciliation or if it was expected to address fundamental imbalances in power and wealth. The TRC had to be viewed as one

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<sup>51</sup> B. Hamber, “*Dr Jeckyll and Mr Hide*”, p 9.

<sup>52</sup> B. Hamber, *Who pays for peace? Implications of the negotiated settlement for reconciliation, transformation and violence in a post-apartheid South Africa*, pp 13-14.

<sup>53</sup> *Ibid*, p 14.

of the several mechanisms for reconciliation and only as one amongst other mechanisms for addressing the conflicts of the past. Hamber predicted that in years to come the TRC would amount to little, unless it was complemented by a broader process of human and economic development including the legal and constitutional protection of human rights and the building of a human rights culture, as well as violence prevention strategies which seek to address the deferring and hanging forms of violence that marginalized South Africans continue to endure.<sup>54</sup>

According to Yesmin Sooka, former TRC commissioner, the TRC was necessary so that victims saw a visible expression of government's interest in this regard. Also, the victim's needs changed consistently so a victim's programme needed to be set up. Sooka states that money could become a central factor in the ritual of atonement in modern societies. Even though complete restitution was impossible, the mechanics of restitution had strong symbolic importance. Sooka regarded the inability to engage socially those who benefited from apartheid and who voted for the previous government as one of the TRC's major failures.<sup>55</sup>

Anjie Krog in *Country of my Skull* explained that academics believe that pain destroys language and that this brought about the immediate reversion to a pre-linguistic state. To get to the memory of what happened, to fix it in words is to be present at the birth of language itself. However, more importantly Krog explains that this particular memory which is at last captured in words could no longer haunt you because you have taken control of it. Krog felt that this was possibly what the Commission was all about.<sup>56</sup>

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<sup>54</sup> B. Hamber, "Dr Jeckyll and Mr Hide", p. 10.

<sup>55</sup> Y. Sooka, *The Unfinished Business of the TRC, From Rhetoric to Responsibility: Making reparations to the survivors of past political violence in South Africa*, pp 6-7.

<sup>56</sup> A. Krog, *Country of my Skull*, p 43.

## CHAPTER 3

### SUB COMMITTEES OF THE TRC

In this chapter, the focus is on the three Committees of the TRC, namely, the Committee on Human Rights Violations, the Committee on Amnesty and the Committee on Reparations and Rehabilitation. Their basic functions are briefly outlined and how they carried out their mandate is explained.

#### 3.1 COMMITTEE ON HUMAN RIGHTS VIOLATIONS

This committee conducted open hearings throughout the country, where survivors of human rights abuses and/or their families had to testify regarding their experiences. The purpose of this was to acknowledge officially both the suffering of survivors and the fact that they had been treated unjustly. By allowing survivors to tell their stories, the Commission hoped to allow them to come to terms with the past and finally lay to rest the trauma and pain associated with it.

Secondly, the Committee had to supervise a research function whereby documents and evidence relating to gross human rights violations had to be collected in order to compile the comprehensive final report. This also helped in uncovering information which was of use to the Committee on Amnesty, the Committee on Reparations and Rehabilitation or an investigative team.<sup>57</sup>

#### 3.2 COMMITTEE ON AMNESTY

This Committee had the task of granting amnesty to these people who have committed political crimes. For a person to qualify for amnesty he/she had to satisfy two basic requirements:

1. He or she must fully disclose all acts in respect of which amnesty is being sought. If a perpetrator commits two crimes and fails to disclose one of those,

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<sup>57</sup> G. Simpson & P. van Zyl, South Africa's Truth and Reconciliation Commission, *Temps Modernes* (585), 1996, p 7.

then he or she will not be granted amnesty in respect of the non-disclosure crime.

2. ... the crime which is disclosed must meet the definition of a political crime contained within the Bill. The definition used in the Bill represents a modified version of the internationally accepted Norgaard Principles which were used in defining political crimes in Namibia.<sup>58</sup>

The Norgaard Principles were a set of guidelines drawn up by a Danish jurist, Carl Norgaard, when he was President of the European Commission of Human Rights in the 1980's. It determined which common crimes should be regarded as political offences.<sup>59</sup>

The main concern of the Committee was with the human rights violations committed by members of the security forces and other clandestine organizations against members of the liberation movements or anti-apartheid activities. Political crimes committed in the course of inter-organizational conflict, particularly between the IFP and ANC, also had to be taken into account. That was why, in the South African context, the Norgaard Principles were in Section 20 of the Promotion of National Unity and Reconciliation Act of 1995 modified through a series of political compromises, to account for acts committed against and between political groups and offenses by state officials against political activists.<sup>60</sup> The TRC's ambit included all human rights violations committed in the course of conflicts in South Africa's past. This had angered many human rights activists and organizations as they argued that no distinction was being made between acts performed in defense of apartheid and those performed in the course of an internationally recognized struggle for liberation and self determination.<sup>61</sup>

However, South African politicians argued that the work of the TRC would be delegitimised if they were only to investigate human rights abuses coming only from one side of the South African conflict. This would have caused considerable conflict.<sup>62</sup>

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<sup>58</sup> G. Simpson and P. van Zyl, South Africa's Truth and Reconciliation Commission, *Temps Modernes* (585), 1996, p 8.

<sup>59</sup> Bhargava, A., Defining Political Crimes: a case study of the South African Truth and Reconciliation Commission, *Columbia Law Review*, 102(5), June 2002), pp 1311-1312.

<sup>60</sup> *Ibid*, p 1312.

<sup>61</sup> G. Simpson and P. van Zyl, South Africa's Truth and Reconciliation Commission, *Temps Modernes* (585), 1996, p 8.

<sup>62</sup> *Ibid*, p 8.

Once amnesty had been granted, a person's criminal, as well as civil liability had to be extinguished. This meant that a person who had been tortured or a dependent who has lost a bread winner cannot bring a damages claim against the perpetrator to whom amnesty had been granted to. In theory, this meant that the state assumed moral responsibility for fulfilling this claim by granting some form of rehabilitation assistance to the victim or some form of reparation.<sup>63</sup>

Bizos doubts the fact that it was right for the law to deprive people of civil action but justifies this with the fact that this process of amnesty deflated events that could have led to a civil war. He saw prosecutions of perpetrators in many cases as unrealistic.<sup>64</sup>

However, he explains that prosecutions for who deliberately tried to mislead the amnesty panels in their applications was necessary including those who failed to apply for amnesty and whose applications were denied. He continues by adding that the matter cannot just be left there as it would not be right to the victims because it would mean that their justice as yet further denied. This would place victims in a position to question the integrity of the state in setting up an amnesty process in the first place. Blanket amnesty could have then been granted from the start. The law should take its course, or the process of the TRC would be an insult.<sup>65</sup>

Hamber claims that people had been denied their rights to justice and civil recompense while they have seen perpetrators granted amnesty. In addition to that, the intractable personal loss and on going poverty aggravated the pain that many survivors suffered. Due to this many have called for justice instead of the amnesty process.<sup>66</sup>

The Amnesty Committee had by 30 September 1997 undertook to review 7 127 amnesty applications. However, the deadline had to be postponed three times. The scale of the amnesty applications forced the President to add another twelve judges to the panel of five members of the amnesty committee. Amnesty procedures were much more legal than that

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<sup>63</sup> *Ibid*, p 8.

<sup>64</sup> G. Bizos, *The Provocations of Amnesty*, p 7.

<sup>65</sup> *Ibid*, pp 7-8.

<sup>66</sup> B. Hamber, *Who pays for peace? Implications of the negotiated settlement for reconciliation, transformation and violence in a post-apartheid South Africa*, p 13.

of the Human Rights Violations hearings and all applications were normally represented by lawyers. Witnesses could be subpoenaed to the hearings.

To be granted amnesty, applicants had to prove that their actions were politically motivated. Violations had to be gross and within the mandated period. In addition, they had to disclose all relevant information including the chain of command responsible for the action. They had to demonstrate that the violation was a proportional response to circumstances, even though this was very seldom given serious consideration. However, applicants did not have to offer any expression of remorse. Of the 1443 applications heard, 122 applicants were granted amnesty, 3115 applications were found to concern actions which according to the criteria employed by the commission were not politically motivated. By December 2001, the Amnesty Committee had completed its work, granting a total of 1146 amnesties of a total of 7127 applications.<sup>67</sup>

Kenneth Christie, who is an Associate Professor in the Department of Comparative Politics at the University of Bergen in Norway, admits that the TRC did uncover some confessions and these proved vitally important in uncovering the truth. In this sense, confession is seen as an instrument or tool in truth procurement regardless of whether or not it was constructed or whether there were other agendas. According to Christie, the most practical and revealing thing about the TRC was the number of bodies that were exhumed under this process. People could re-bury their families properly and the grieving process began. For many people, who did not know where their loved ones were, it was now possible to form some understanding of what had happened to them.<sup>68</sup>

Christie agrees that the granting of amnesty to 37 ANC members did some harm to the TRC even though this decision was later reversed. However, granting amnesty pressured others to come forward. For example, in the Eugene de Kock trial, a great deal of pressure was put on the security police and allowed for new evidence to come forward. This carrot and stick approach produced new and hidden details of how things worked. But at the same time, the difference in treatment between the police and the military was revealed if one compares the Magnus Malan trial with that of Eugene de Kock's trial. The former Defence Minister got off free, thus there were very few applications from the military.

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<sup>67</sup> T. Lodge, *Bus stop for everyone*, p 182.

<sup>68</sup> K. Christie, *The South African Truth Commission*, p 156.

This was a disaster for the TRC. The military thought they were engaged in a war and were therefore outside the channels of normal justice and did not see themselves as guilty of heinous crimes. The police on the other hand saw themselves as intimately involved in upholding the structures of apartheid and the verdict on De Kock forced many of them to come forward. Looking at it from this point of view, the amnesty process had been a way of recovering the truth in a partial way. It had aimed at full disclosure and received less than that. By granting amnesty the TRC tried to induce individual accountability for actions and that as soon as evidence was produced that individuals had committed gross violations of human rights, prosecutions should have been considered.<sup>69</sup>

Tom Lodge believes that amnesty offered little opportunity for spiritual emancipation. Also, amnesty procedures had provoked much more public disagreement than the human rights hearings and the commission had to defend its work against several court challenges.

Another source of frustration for the commission was the autonomous status of the Amnesty Committee and its chaotic organization. The Committee was supposed to use the Norgaard Principles in its decisions of whether an offence was politically motivated or not but ignored these when they were granting amnesty to 37 ANC leaders who did not disclose specific acts or individual motivation. The Commission then had to seek a Supreme Court finding to obtain a reversal of the decision. Another example of the Committee's inconsistency was the indemnification of the killers of Amy Biehl, an American exchange student murdered by supporters of the Pan Africanist Congress (PAC). The offence had to be sanctioned by a political organisation in order to be indemnified, however, Amy Biehl's murder was repudiated by the PAC.<sup>70</sup>

According to Lodge, applications for amnesty were all too often accompanied by justifications and excuses or very qualified statements of regret. However, some families were really skeptical about the extent to which killers genuinely felt remorse.<sup>71</sup>

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<sup>69</sup> K. Christie, *The South African Truth Commission*, pp 140-141.

<sup>70</sup> T. Lodge, *Bus Stop for Everyone*, p 185.

<sup>70</sup> *Ibid*, p 185.

<sup>71</sup> *Ibid*, p 189.

### 3.2.1. WHO IS ELIGIBLE FOR AMNESTY

Should those who have tortured, kidnapped and killed be convicted or imprisoned or should they be forgiven in order to foster a spirit of national unity and reconciliation?

Amnesty was not an automatic process, the Act for which amnesty is sought had to be political in nature and all the facts for each offence had to be fully disclosed. The national Unity and Reconciliation Act, states that the decision to grant amnesty should be considered in the light of the motive of the person who committed the act, the context in which the act was committed, the legal and factual nature of the act, the gravity of the offence, the objective of the act and whether the act was carried out by order or with the approval of a political body, institution or individual.<sup>72</sup> In essence the TRC traded full disclosure for amnesty.

Some believed that the punishment of perpetrators was the best insurance against future repression and that those who violate human rights should know that at some stage they will be convicted and this would deter them from committing similar crimes. However, if they are allowed to commit gross abuses with absolute impunity, then they are more likely to resort to actions which violate fundamental human rights when the opportunity presents itself again. Simpson and Van Zyl (who is a former Researcher at the Centre for the Study of Violence and Reconciliation) also mention that it could be argued that tyranny begins where the law ends, and if the law fails to punish those who have transgressed, then the very notion of the rule of law is undermined. Granting amnesty could also result in a great deal of popular disillusionment and cynicism. It could have had the effect of weakening the moral authority of government and reduce the extent to which citizens are prepared to heed its moral call. Simpson and van Zyl believe that amnesty also represents a significant capitulation to the demands of the security forces, leaving them with a disproportionate amount of power in an emerging democracy. Thus, undermining the sovereignty of a newly elected government.<sup>73</sup>

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<sup>72</sup> G. Simpson & P. van Zyl, *South Africa's Truth and Reconciliation Commission, Temps Modernes* (585), 1996, p 9.

<sup>73</sup> *Ibid*, pp 9-10.



Simpson and Van Zyl argue further that amnesty should be granted simply because it is politically expedient to do so and that a new government that is eager to remain in office may simply decide to accommodate powerful interests, regardless of the consequences for those who have suffered. They believe that such amnesties could have the effect of entrenching the power of those who have violated human rights and jeopardizing any substantial social or political transformation. They point out that there are stronger counter-arguments to those who supported prosecutions. The most powerful argument is that prosecutions may lead to destabilization or outright rebellion. This could have weakened an already fragile democracy and led to a coup where a legitimate government is replaced by a military regime. They argue further that democracy should be consolidated as a first priority in order to ensure the survival of a government that will protect and promote human rights, particularly if the government inherits a reliance on many of the institutions of the old regime. Prosecutions would have undermined the process of transforming institutions such as the police and the military into organizations accountable and appropriate to a democratic state. Granting amnesty was regarded as the lesser of the two evils. The alternative would have been a return to military rule. Those who oppose prosecutions believe that it is better to compromise in the short term in order to ensure that the long term objectives of peace, stability and a respect for human rights was achieved.<sup>74</sup>

The Commission had to take the “middle road” between the alternatives of prosecution or pardon but the granting of amnesty was not to be automatic. In order to assess whether a crime could be considered “political” the Commission had to take the following factors into account: the gravity of the offence, whether it was motivated by spite or malice or for genuine political reasons, whether there was a reasonable relationship between the political objective sought to be achieved and the means used in order to achieve it, whether the means used were proportional to the ends achieved and whether the act was directed against the government or political opponents or whether people were targeted.<sup>75</sup>

Amnesty did not have to be granted in all areas, particularly brutal, heinous or barbaric crimes. Proponents of the TRC hoped to satisfy both sides of the punishment/pardon debate. The Commission hoped to send out the message that by not granting amnesty in

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<sup>74</sup> G. Simpson & P. van Zyl, South Africa’s Truth and Reconciliation Commission, *Temps Modernes* (585), 1996, p 10.

<sup>75</sup> *Ibid*, pp 10-11.

certain cases that certain perpetrators of gross human rights violations were not above the law. Also, if perpetrators disclose their crimes it will call them to account for their past deeds and extract a symbolic commitment to a new era based on a respect for the rule of law. The Commissions had to publish a list of the names and crimes of those to whom amnesty had been granted. It was hoped that the Commission would provide a bridging mechanism between the old regime and the new order and that it would promote stability and reconciliation and reassure the security forces that they were not the subjects of a witch hunt or a campaign of vengeance. This would assist in promoting loyalty to the new dispensation and a respect for our new democracy.<sup>76</sup>

It should be noted however that the Amnesty committee turned down a substantial proportion of amnesty applications in judge's chambers and without public hearings on the grounds that those applications were brought by convicted violent criminals who could not prove a political motive for what they did. The dilemmas of which acts were political and which not, was very controversial and afterwards appeared to be resolved arbitrarily e.g. in the case of the Boipatong massacre, an Inkatha Freedom Party member was granted amnesty for, amongst others, the killing of an eight month old baby along with its mother. The perpetrator when questioned about this during the hearing offered an argument that "a snake gives birth to a snake", seemingly he saw the baby as an enemy because the mother was one.

In another case, that of student activist Sicelo Dlhomo who was killed by his own comrades, it was explained by the perpetrators that he was a spy, yet one of the TRC investigators on the case concluded that the killers of Sicelo Dlhomo were known but the motive was not clear. Still, the perpetrators were granted amnesty.<sup>77</sup>

Simpson mentions that there were even more significant illustrations of the dilemmas posed for the Amnesty Commission in their adjudication of acts which were deemed political and which were not. Amnesty was granted in some cases involving 'necklace' murders and mob violence based on the principle of "implied authority" of political parties, yet in other case such as the assassination of ANC/SACP leader Chris Hani by two white

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<sup>76</sup> G. Simpson & P. van Zyl, South Africa's Truth and Reconciliation Commission, *Temps Modernes* (585), 1996, p 11.

<sup>77</sup> G. Simpson, "Uncivil society" - *Challenges for Reconciliation and Justice in South Africa after the Truth and Reconciliation Commission*, p. 4.

right wingers, no political authority was found to exist and thus amnesty was refused. In some cases, amnesty was refused because money was paid to assassins of political opponents suggesting that they were personal, while in other cases it was deemed that financial bonuses paid to state agents for their acts of violence did not supersede their political motives.<sup>78</sup>

To Simpson one of the most important contradictions about the findings of the Amnesty Committee was over the question of race or racism as a political motive for gross human rights violations. In some cases, racial motivation was seen to be “political” or in the name of a political organization, whilst in others it was not. Simpson does not see the issue here as being whether or not the individual findings were “fair”, but rather to point out that in “privileging” acts of political violence, the ironic effect was in fact to denigrate and mask issues such as race, gender and class as relevant and self-explanatory categories in understanding the dominant patterns and experiences of gross violence under apartheid. Indeed, Simpson claims that the TRC’s contribution to nation building-and reconciliation could only have been driven at the political level because in practice it was only sustainable by denying the blurred dividing line between party political and other forms of violence.<sup>79</sup>

### **3.3 COMMITTEE ON REPARTIONS AND REHABILITATION**

Survivors of gross human rights violations or the dependents of those killed could apply for some form of compensation to the Committee on Reparation and Rehabilitation. The primary task of this Committee was to make a set of recommendations to the government as to how to implement the reparations policy. This policy had to determine on what basis and according to which criteria should reparations be granted. Also, it had to determine the authority responsible for granting reparations. But its most urgent task was to make recommendations as to how best to assist people who were in crucial need of reparations.<sup>80</sup>

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<sup>78</sup> G. Simpson, “*Uncivil society*” - *Challenges for Reconciliation and Justice in South Africa After the Truth and Reconciliation Commission*, p 5.

<sup>79</sup> *Ibid*, p 5.

<sup>80</sup> G. Simpson & P. van Zyl, South Africa’s Truth and Reconciliation Commission, *Temps Modernes* (585), 1996, p 12.

According to Simpson and Van Zyl , the area of compensation/reparation in relation to the TRC had become fairly controversial. This was so because the compensation which would have been offered by the government would have been considerably less than if a civil action was brought against the responsible perpetrator. There were certain activists who were assassinated and could have filled top-level government positions had they lived, thus their wives /husbands/dependents would have been entitled to civil claims of thousands of rands. However, once amnesty is granted to a perpetrator, these claims are no longer applicable. Thus, certain NGO's have tried to get the clause in the TRC legislation which provided for the abolition of civil claims to be removed. They based their argument on the fact that this clause violates international law which states clearly that even a "successor" regime has a duty to ensure that victims are provided with proper compensation. The clause also violated the interim constitution which granted everyone the right to go to court to settle disputes. However, those in disagreement argue that the interim constitution compelled the present government to grant amnesty. According to those who disagree it was clearly the understanding of the drafters of this constitution that amnesty would include immunity from both criminal prosecution and civil claims. Also if the perpetrators were not offered the prospect of both criminal and civil impunity, then they would not want to come forward voluntarily and disclose their crimes, as this would leave them open to a civil suit although it would have prevented them from going to jail.<sup>81</sup>

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<sup>81</sup> G. Simpson & P. van Zyl, South Africa's Truth and Reconciliation Commission, *Temps Modernes* (585), 1996, p 13.

## CHAPTER 4

### THE MANDATE OF THE TRC

In this chapter, the activities of Infocomm is investigated. Some criticism of its workings by different writers is included. Although criticism of this system is wide, it is balanced against the enormity of the task that was faced by Infocomm. My objectives in discussing the different types of truth is to create awareness of the different approaches to this type of issue. The different approaches to the concept 'truth' is vast. Writers such as Wilson, Van Zyl Slabbert, Albie Sachs and Gutmann and Thompson, all have varying approaches to this concept. I hope to highlight the limitations of the mandate also in order to create awareness of this aspect which is not widely covered in other literary sources.

#### 4.1 INFOCOMM

Infocomm (information management system) was a large scale human rights database project which was created by Patrick Ball of the American Association of the Advancement of Science. Infocomm was adopted for use in other places such as El Salvador and Haiti. Infocomm was based on logical positivism and quantitative statistical methods. Wilson quotes Janice Grobbelaar, Information Manager in Johannesburg:

“Positivism is the best way to prevent the truth to the majority of South Africans for reasons that most South Africans could not understand. Truth will be delivered by methodological vigor and scientific findings. The legitimacy of the TRC depends on its ability to create a truth that is acceptable, and that means a scientific valid process that people can buy into.”

Wilson claims that this comment by Grobbelaar shows a recognition of the mythical power of positivist rhetoric and the assumption that ordinary South Africans will believe in facts produced through a positivist methodology mostly because they recognize its authoritative style. According to Wilson, Grobbelaar seemed to revel in the mystique of her powerful technology, which used the testimonies of the masses as its grist to magically produce graphs and bar charts which enjoyed unassailable validity. Wilson adds that this in-house governmental positivism exists since a scientific elite controls society according to principles which the majority may not share or understand.<sup>82</sup>

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<sup>82</sup> R. Wilson, *The Politics of Truth and Reconciliation in South Africa*, p 39.

Wilson adds that Grobbelaar's comment also expresses a pragmatic evaluation of the political conditions in which the TRC was working. He continues to add that the TRC was widely seen by opposition parties such as the National Party, the Democratic Party, the Inkatha Freedom Party and the Pan African Congress as an ideological advertising campaign for the ANC's version of the past and although the hearings had a pro-ANC resonance to them, the Report was not an unreconstructed liberation narrative. Commissioners were however pushed further down the positivism route due to constant political pressure even though they were caught in a hail storm of political disputes and initial evaluations of its methods.<sup>83</sup>

According to Wilson, the Commissioners could fulfill Desmond Tutu's vision to be a one nation institution embracing all political parties and favouring none if they succeeded in having impartial methods. He adds that facticity and impartiality were the foundations for the TRC's hegemonic project and nation building mission.

Wilson explains that the TRC's technologists of truth adopted a muscular hard-hitting language to silence its critics. He compares STRATCOM (the quasi-military) agency entrusted by apartheid politicians with a mass disinformation campaign to INFOCOMM which was the past apartheid strategy that would wage a quasi-military campaign of truth finding. "Protocol" was the term used to take victims stories down. The protocol was the passive data which was "captured" by the front line data processors and then "structured" in a uniform manner by the analysts.<sup>84</sup>

Infocomm had 3 main objectives: to identify a systematic pattern of abuses through statistical analysis, to describe the nature and the extent of gross human rights violations and to evaluate its own activities. Infocomm was motored along by individual acts of violations although it had seven stages from statement taking to making its findings.

This system was designed to breakdown diagrams of the narratives contained in statements into quantifiable acts. Wilson explains that complex events and people were divided up

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<sup>83</sup> R. Wilson, *The Politics of Truth and Reconciliation in South Africa*, p 39.

<sup>84</sup> *Ibid*, p 39

into constituent components – either as distinct acts in the case of events or three categories in the case of persons – victims, perpetrators or witnesses.<sup>85</sup>

Wilson adds that it was interesting to note that victims’ testimonies at public human rights violations hearings were left out of the “information flow.”<sup>86</sup> Hearings were not conceptualized as having any input into the production knowledge or as having any epistemological status at all.<sup>87</sup>

Wilson believes that the logic of the information management system, combined with an internal sense of crises led to a wholesale restructuring towards making findings on individual acts. He continues that commissioners were panicking in the late 1996 when there was a policy vacuum for the first half of the commissions life when there was still no definition of the basic categories such as “victim” or “gross human rights violations”

Also, the TRC expected thousands of people to flood its offices but deponents failed to show up due to poor public education campaign and by September 1996, the TRC had only then 4276 statements when it should have had about 20 000. In addition, the Amnesty Committee acted as if it were a separate institution and refused to hand over material from amnesty applications on the grounds of confidentiality “ and crucially, there had been no findings and without this the Reparations Committee could not make reparations or grant urgent interim reparations to those suffering acutely. Patrick Ball in an internal document admits to the failure of the system as he states that they (those who designed the system) failed to consider the profound effect the hearings would have on all aspects of the TRC’ functioning. However, Wilson agrees that the problem did not just lie with the information management system design. He continues that ever since the TRC’s establishment there had been tension between two competing visions: whether the TRC was a legal process or instrument of moral and emotional catharsis for the nation. However, this tension reached a breaking point and the “legalists” eventually won out over the “moralists” in the area of information management and the production of legal findings. Wilson adds that the HRVC, which included a group of forceful lawyers and intellectuals, steered the institution

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<sup>85</sup> R. Wilson, *The Politics of Truth and Reconciliation in South Africa*, p 40.

<sup>86</sup> *Ibid*, p 41.

<sup>87</sup> *Ibid*, p 41.

towards the production of legally defensible findings through positivistic methods.<sup>88</sup> According to Wilson, committee members perceived that all the public hearings were the detriment of making findings and the number of public hearings was sealed down and they then turned their energies to reshaping Infocomm to produce individual findings. It was felt that each deponent of a statement had a statutory right to have their case investigated. Wilson continues that the Human Rights Committee members then began their massive restructuring with the first stage in the process which was statement taking. This facilitated the Investigated Units, “low level” legal corroborations which took another year to produce results and by early 1998, the TRC was making regional findings.<sup>89</sup>

Wilson points out that it is important to distinguish between legal positivism and social positivism. Legal positivism is certain observational tests which are not concerned with content but with pedigree, that is, the manner in which the rules were developed. Wilson expands on this by adding that for legal positivists the set of valid legal rules is exhaustive of the “law” and there are no legal obligations without valid legal rule. On the other hand, sociological positivism asserts that knowledge cannot be based upon anything apart from systematic empirical observation and experimentation. However, both focus on positivism and share certain characteristics which create affinities between them, both use the same view of the natural sciences and its iron laws as their model and both engage in a radical separation of force and value.<sup>90</sup>

## 4.2 DIFFERENT TYPES OF TRUTH

According to Wilson, the TRC’s truth-finding work was not organized through a set of unified procedures consistently applied throughout the life of the Commission. He believes that the fact that no overall, coherent conception of truth dominated from the beginning to end resulted in part from the fissured internal organization of the Commission the Investigative Unit, the Research Unit and the Human rights Committee all defining truth differently. Wilson expands that each of these components of the

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<sup>88</sup> R. Wilson, *The Politics of Truth and Reconciliation in South Africa*, pp 41-42.

<sup>89</sup> *Ibid*, p. 42.

<sup>90</sup> *Ibid*, p 42.



Commission made different types of input into the Informational Management System (Infocomm) and each consumed different parcels of truth coming back from Infocomm.<sup>91</sup>

The TRC's final report defined four notions of truth which had guided the Commission:

1. Factual or Forensic truth is the familiar legal or scientific notion of bringing to light factual, corroborated evidence. This category includes individual incidents as well as the context, causes and patterns of violations
2. Personal or narrative truth: refers to the individual truths of victims and perpetrators attaching value to oral tradition and story telling. Healing often takes place as narrative truth is recounted.
3. Social truth: is established in the words of Judge Albie Sachs, through interaction, discussion and debate. Social truth acknowledges the importance of transparency and participation and affirms the dignity of human beings.
4. Healing and restorative truth: repairs the damage done in the past and prevents further recurrences in the future. The dignity of victims is restored by officially acknowledging their pain.<sup>92</sup>

Wilson categorizes two main paradigms of truth under which all others congregated: forensic truth and narrative truth. Forensic truth focused on creating the knowledge for the findings and final Report, while, personal, social and healing and restorative truth emphasized narrative, subjective and experiential dimensions of truth telling. Wilson expands that the two types of truth, were regularly counterpoised to one another and each was dominant at different times. Narrative truth being regmonic at the beginning of the Commission's life as public televised hearings had an unexpectedly dramatic effect. However, it was displaced, by a more legalistic forensic paradigm after the first year.

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<sup>91</sup> R. Wilson, *The Politics of Truth and Reconciliation in South Africa*, p 36.

<sup>92</sup> G. Simpson & P. van Zyl, South Africa's Truth and Reconciliation Commission, *Temps Modernes* (585), 1996, pp 36-37.

Wilson explains this granted epistemological value in the process of creating knowledge about the past. It means to produce knowledge and an end in itself, whereas the other three truths are means directed towards other ends and specifically towards healing or affirming dignity. Wilson continues to say that the 3 types of narrative truth are not given any epistemological standing and that they are there for emotional “catharsis” and nation building and that they do not contribute to the history of South Africa nor to an improved understanding of the context patterns and causes of past violations.<sup>93</sup>

According to Wilson, it is difficult to understand the causes of past conflict in South Africa if the political narratives of race, ethnicity and nationalism are not taken seriously. An attempt was made to grasp how ideology was internalized by actors and motivated certain types of behavior. Wilson continues that without encompassing the meanings associated with ethno-nationalist discourse in the picture, one gets no sense of how racism was an essential element of the background “life world” in which human rights violations occurred. However, Wilson expands that there seemed to be no conceptual place for subjectivity and political identity formation in understanding macro-historical events. However, narrative and social truths were included in public HRV hearings and in the final report solely for their healing potential. Wilson explains that was so much of emotional window dressing while the serious business of investigative work was carried out under the rubric of factual forensic truth.<sup>94</sup>

Slabbert argues that the TRC was based on suppositions and assumptions and that even if they were not demonstrably invalid, they were misleading and ambiguous. He felt that the concept of truth had to be universal and transferable or else it was a senseless exercise. Slabbert goes on to say that victims and perpetrators should have the same “truth” for which confessions, forgiveness and reconciliation are being asked. He mentions that the TRC cannot be based on verifiable scientific truth in the pure sense of the word. Truth, in fact, in modern industrial societies is determined by the country’s prevailing justice system. Slabbert refers to the international tribunal of justice which, at international level means that there is a generally acceptable process of cross examination, defense and delivery of testimony and that the judgment of the court is accepted as valid and true. If there are reasonable grounds for doubt then the right to appeal is granted. This simply

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<sup>93</sup> R. Wilson, *The Politics of Truth and Reconciliation in South Africa*, p 37.

<sup>94</sup> R. Wilson, *The Politics of Truth and Reconciliation in South Africa*, p 38.

meaning that the truth of accountability is determined through the law. Slabbert now brings in the fact that the TRC determined truth without legal process, this he believes should not have happened. The TRC could not force accountable truth by means of confession, it became a sort of quasi-court where those who were summonsed or volunteering to appear were confronted with a mass of circumstantial evidence and an implication of guilt which could not be proved by means of a legal process. According to Slabbert, this led to victims becoming embittered, suspects becoming embittered and both question the validity and successfulness of the TRC. The only exceptions were the people who were forced to make a confession because they were revealed through the normal legal process.<sup>95</sup>

Slabbert believes that there are only two means of arriving at the truth in a social context: one is through the legal process and the other through personal confession (that too people can lie about). He states that whether both are needed or just one is sufficient for reconciliation is an empirical question that cannot be predetermined by means of simplistic assumptions of a romanticised, sentimental morality.<sup>96</sup>

This does not mean that we should not be interested in the truth of our past. It will be exposed through research, drama, literature, film and journalism<sup>97</sup>

Albie Sachs's draws a distinction between the two types of truths that he sees: microscopic truth and dialogic truth. Microscopic truth is when you observe a limited prescribed field- you control the variables, excluding everything else and make your observation in terms of the relationship between the variables. Microscopic truth is what is examined in a legal case. Dialogic truth on the other hand involves multiple perspectives, experiences and interpretations of events of the different participants. Sachs's calls it a kind of social truth. Sachs mentions that the difficulty in analyzing the TRC lies in the fact that it dealt with both kinds of truth at the same time.<sup>98</sup>

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<sup>95</sup> F. van Zyl Slabbert, "Truth and Reconciliation without truth", in W. James and L. van de Vijver (eds), *After the TRC reflections on truth and reconciliation in South Africa*, pp. 68-69.

<sup>96</sup> *Ibid*, p 71.

<sup>97</sup> *Ibid*, p 71.

<sup>98</sup> A. Sachs, "His name was Henry", in W. James and L. van de Vijver (eds), *After the TRC reflections on truth and reconciliation in South Africa*, p. 97.

Sachs has since added two further categories of truth: logic truth and experiential truth. In the former – there is logic to truth and you can deduce truth from a statement by the process of inference. Experiential truth has to do with ones experiences in a particular place and circumstances. This kind of truth he sees as powerful and varied for a great number of people.<sup>99</sup>

According to Gutmann and Thompson, the discovery of historical truth is seen as both an end in itself and a means to a better society. With this point of view, the emphasis is not so much on the victims but more to create a shared history as a basis for social and political co-operation in future. Demonstrating the illegitimacy of apartheid, facing unwelcome truths, decriminalizing the resistance movement and forgiving a collective memory are amongst the many aims embraced by historicists justifications emphasized truth but also accommodates reconciliation. The editors explain that collective memory can play an important role in consolidating the power of newly emerging democracy just as it helps sustain authoritarian regimes. More importantly is its moral condemnation of the past as a way to start developing some common moral standards for the future.<sup>100</sup>

#### **4.3 LIMITATIONS OF THE MANDATE OF THE TRC**

According to Wilson, Anthea Jeffrey’s argument that the TRC was neither objective nor neutral but was in favour of the ANC and liberation movements and that it did not adequately uphold legal standards of investigation, was not the most pronounced or significant feature of the TRC but rather the hidden policy decisions on truth making and the invisible technologies of bureaucratic truth production. This had received little elucidation or analysis either in the South African case or in truth commissions elsewhere. Wilson explains that it becomes increasingly necessary to interrogate the ways which human rights violations are formulated and investigated as part of a wider assessment of the genre of human rights reporting. Wilson argues that human rights methods of investigation if not accompanied by other documentation and analysis can be a poor avenue for accessing the experimental dimensions of violence.<sup>101</sup>

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<sup>99</sup> A. Sachs, “His name was Henry”, in W. James and L. van de Vijver (eds), *After the TRC reflections on truth and reconciliation in South Africa*, p. 97.

<sup>100</sup> A. Gutmann and D. Thompson, *Truth versus Justice*, p. 33.

<sup>101</sup> R. Wilson, *The Politics of Truth and Reconciliation in South Africa*, p. 33.

However, the South African TRC had the widest remit of any truth commission to date and included all cases of torture and “severe ill-treatment” unlike the Uruguayan Commission (1985) which reported on the 164 disappearances during military rule, ignoring the more common offences of torture and illegal detention, while the Chilean National Commission for Truth and Reconciliation (1991) only included in its remit, violations that resulted in death.<sup>102</sup>

According to Wilson, the TRC attracted lots of negativity for only including cases that exceeded the wide latitude of abuse permitted by apartheid laws. Under the terms of the Promotion of Unity Act, detention without trial, pass laws, racial segregation of public amenities, forced removals and ‘Bantu’ education policy were all excluded, although they were all legal under the apartheid laws.<sup>103</sup>

The focus of the commission was primarily on the extreme events and not upon the everyday, mundane bureaucratic enforcement of apartheid. According to Wilson, judging the past in terms of itself hinders the development of a new democratic conception of “justice” and prevents an understanding of how violence became a routine part of state and social practices. He adds that the exclusion of facts which were legal under apartheid created a false distinction between the normative aspects of a racialised and authoritarian order and illegal forms of violent physical coercion when the latter implied the former.

Wilson points out that Mahmood Mandani, who is the Herbert Lehman Professor of Government and Director of the Institute of African Studies at Columbia University, New York, also bitterly criticized the TRC for avoiding the issue of the beneficiaries of apartheid and the Commission’s inability to see apartheid as a system not dedicated towards individual gross human rights violations parse, but towards dispossession of Africans and their forced removals from their land. In Mandani’s opinion, this narrow individualistic and legalistic view actually obstructed the wider project of ensuring social justice for the majority of African.<sup>104</sup>

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<sup>102</sup> R. Wilson, *The Politics of Truth and Reconciliation in South Africa*, p. 34.

<sup>103</sup> *Ibid.*, p. 34.

<sup>104</sup> *Ibid.*, p. 35.

Wilson credits the Commission however for addressing aspects of the institutional context in which apartheid operated through nine institutional and special hearings on different sectors of state and society. Evidence was heard in these hearings on the maintenance of an environment in which human rights violations could thrive. Special hearings dealt with compulsory military service, youth and children and mothers whilst institutional hearings were held for business and labour, the religious community, the legal community, the health sector, the media and prisons. These results which were published in volume 4 of the TRC Report were often damning. Businesses were centrally involved in state security initiatives, specifically designed to sustain apartheid rule and in turn benefited directly from their involvement in the complex web that constituted the military industry. Also, the judiciary was blamed for not upholding apartheid legislation and for unquestioningly granting police search warrants and turning a blind eye to the causes of death in police custody. Also condemned are some Christian churches for giving their blessings to the apartheid system, doctors and surgeons were accused of regularly misrepresenting forensic evidence and the media is savaged for being a docile tool of the National Party government. Wilson believes that through these hearings, the TRC transcended some of the mandate and did address, albeit in a fragmented way certain context and institutional structures of apartheid.<sup>105</sup>

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<sup>105</sup> R. Wilson, *The Politics of Truth and Reconciliation in South Africa*, p. 36.

## CHAPTER 5

### CRITICISM OF THE TRC

In her survey of the vast literature on the TRC, Annelies Verdoolaeye points out that many writers are critical about the TRC, “specifically with regard to the aims of reconciliation, justice or reparations for the victims.”<sup>106</sup> The objectives in this chapter are to point out the major criticism levelled at the Commission.

#### 5.1 AN ANC PROPAGANDA MACHINE?

The respected South African historian Hermann Giliomee and his co-author Bernard Mbenga quite rightly pointed out in their prominent volume titled *New History of South Africa* that the composition of the TRC was hardly balanced. Tutu, the chairman, was a patron of the UDF, which acted as internal wing of the ANC in the period 1985-1990. None of the 17 members of the Commission was a supporter of either the NP or the IFP. Indeed all of them were known to be members of or sympathizers with the ANC.<sup>107</sup> Could objectivity be expected from such a leadership?

It is clear that a large section of the Afrikaner community was disinterested in or openly inimical to the TRC – probably partly because of the composition of its leadership. In addition to Piet Meiring, Antjie Krog and Frederik van Zyl Slabbert few Afrikaners seemed to be enthusiastic about the TRC. Indeed, the vast majority seemed to be either disinterested in or actively opposed to its activities. A line of criticism that especially found favour in traditional and right-wing Afrikaner circles was that the TRC was, as stated by the activist Dan Roodt, “nothing but propagandistic history writing funded by the state.”<sup>108</sup> The ultra right-wing Afrikaans newspaper, *Afrikaner*, claimed that the TRC never aimed at achieving either truth or reconciliation, but was merely an ANC tool to exact revenge.<sup>109</sup>

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<sup>106</sup> Verdoolaeye, A., *The debate on truth and reconciliation: A survey of literature*, no page numbers.

<sup>107</sup> Giliomee, H., Mbenga, B. et al., *New History of South Africa*, pp 413-414.

<sup>108</sup> Roodt, Dan, *Om die Waarheidskommissie te vergeet*, p 5.

<sup>109</sup> Editorial, “ANC wraaksug”, *Afrikaner*, 2006/02/02, p 2.

## 5.2 FLAWED METHODOLOGY

According to John-Kane Berman the Commission's methodology was flawed since it failed to properly check the allegations on which it relied, basing key findings on untested and uncorroborated statements that were sometimes mainly hearsay. He claims that the basic principles of fairness were not complied with and the TRC exempted themselves from legal principles.<sup>110</sup>

Berman also claims that the Commission sometimes effectively repudiated earlier judicial rulings without explaining why they were incorrect or its own findings right. Some of its own facts were even wrong, e.g. such as the death toll in a well known incident. The Commission even misrepresented what court or commissions of inquiry had earlier said. In some instances it simply ignored juridical rulings altogether and put forth its own version of the truth. Both the law and principles of transparency and fairness require judges to give reasons for their findings which the TRC did not do.<sup>111</sup>

According to Berman, distortion also arose from what the TRC left out of its account. The Commission probed counter revolutionary strategies and activities but failed to adequately probe the revolutionary activities that the counter revolution was designed to overcome.<sup>112</sup>

According to Tom Lodge, who is a Political Science Professor at the University of Witwatersrand, the settings created by the Commissioners deliberately invoked Christian liturgy associated with the extension of the sacrament, since the hearings were not simply about remembrance and bearing witness but were dedicated to the transcendence of individual experience and the construction of community through the evocation of suffering and sacrifice.<sup>113</sup>

Lodge mentions that Belinda Bozzoli's analysis of the 1996 Alexandra hearings' suggest how the narratives presented to the commissioners constituted a carefully structured avic ritual to achieve these goals. The ritual at Alexandra began with a spokesperson for the township welcoming the commissioners on behalf of the community and reminding them

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<sup>110</sup> Kane-Berman, J., Foreword, p. 2.

<sup>111</sup> Kane-Berman, J., Foreword, p. 3.

<sup>112</sup> Kane-Berman, J., Foreword, p. 3.

<sup>113</sup> T. Lodge, *Bus stop for everyone*, p. 183.



of the key episodes of Alexandra resident collective experience of apartheid's inflictions. Lodge noted that according to Bozzoli, this was clearly public folk history. He notes that various other local notables then also helped to "conceptualize" other notables with further testimony on behalf of the "community".<sup>114</sup> Following that, a local ANC leader unfolded a heroic and impersonal narrative of resistance and repression, referring to the need for forgiveness and reconciliation and placing older generation and more conservative local ANC leaders at the helm of events while downplaying the leadership role and the more violent activities of the local youth congress activists.<sup>115</sup>

After that witnesses would give individual testimony and carefully phrased questions would lead them towards their moment of greatest suffering at which point, the female comforters of the Reparation Committee would move forward to embrace them. The witnesses would then be thanked heartily and the chairperson would sum up their stories, which helped to emphasize the common themes in the individual testimonies. Bozzoli's argument is that these once private stories now rendered as public performances were through this process, calculated to achieve important social effects. It was also noted that prompting witnesses to reveal their most profound agonies was not merely aimed at individual healing, but to put pressure on the witnesses in the form of questioning so that the community would feel empathy with the suffering of each witness. Thus, humble victims were socially enabled as communal martyrs and by transforming private grief into public closure, communal approval could be won for what Bozzoli calls the "rites of closure" in which commissioners sought to elicit expressions of forgiveness or requested reparation. This structure of the hearings were according to Lodge directed as much at the commissions reconciliation mandate as its request for truth.<sup>116</sup>

Lodge notes that the procedure followed at the Alexandra hearings were similar to others held at other venues. In this regard he refers to Richard Wilson's analysis of the hearings held on the West Rand and in the Vaal-Triangle, where the commissioners attempted to convert private experience into a common resource. Wilson in his research suggested that four stages were followed in the process of the hearings. The initial phase being the one where the commissioners' response and commentaries universalized individual testimony,

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<sup>114</sup> T. Lodge, *Bus stop for everyone*, p. 183.

<sup>115</sup> *Ibid.*, p. 183.

<sup>116</sup> *Ibid.*, p. 183.

next commissioners sought to emphasize that all suffering was of equal moral significance. Following that, each victim would be inverted with a heroic significance arising from his/her assigned role in a teleology of sacrifice. According to Lodge, the closing rite in this liturgy was redemptive as commissioners would ask those who offered testimony if they could forgive the perpetrators of the violations to which they had borne witness.<sup>117</sup>

According to Lodge certain commissioners believed that forgiveness and the renunciation of vengeance was the most important function of these hearings. He also mentions that amnesty offered fewer opportunities for spiritual emancipation and that the law imposed no obligation on those who applied for amnesty to -express remorse, let alone to seek reconciliation.<sup>118</sup>

### 5.3 HOW FACTUAL WERE THE VICTIMS STATEMENTS?

The TRC received some 21 300 victim statements recording approximately 38 000 gross violations of human rights. However, according to Jeffery, the great majority of victim statements (some 90%) were not given under oath. Jeffery also claims that very few of the statements, if any, were adequately tested under cross examination as the TRC was anxious to avoid subjecting victims to this ordeal. However, the Commission had claimed to have corroborated all victim statements from independent sources of information but in practice it found it impossible to do. Thus, the Commission confined itself to a “low-level” of corroboration. In about 17 500 instances, deponents told the Commission of the violations experienced by others not themselves making many of these statements hearsay rather than personal observation.<sup>119</sup>

Deborah Posel is extremely critical of the fact that the findings of the TRC are almost solely based on victims’ narratives about what happened, and not on evidence as well which can support those narratives. What in effect happened, according to Posel, was that the narratives were shaped by what had been deemed necessary evidence for the desired findings.<sup>120</sup>

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<sup>117</sup> T. Lodge, *Bus stop for everyone*, p. 184.

<sup>118</sup> *Ibid.*, p. 185.

<sup>119</sup> B. Hamber, “*Dr Jeckyll and Mr Hide*”, p. 8.

<sup>120</sup> Posel, D., “The TRC Report: What Kind of History? What Kind of Truth?”, pp160-161.

Amnesty statements, according to Jeffery are a potentially better source of evidence than victim statements, since they expressly qualified for cross examination during public hearings, but Jeffery mentions the fact that the weight of amnesty statements were diminished by various factors. Although amnesty applications to the TRC totalled 7 127 at the time of the report, only 10 amnesty statements had proceeded through a public hearing and had been confirmed as accurate by the granting of amnesty. The TRC initiated operation capture, which was to access relevant material from all the amnesty statements, received 1 239 statements which all still had to proceed through public hearings. Yet none of these amnesty statements were verified so they could not be taken into account in making findings of accountability.<sup>121</sup>

In addition to this, amnesty statements implicated others (on whom alleged instruction violations were carried out). This amounted to accomplice evidence. This evidence was equally vital since an accomplice has an interest in saying whatever will free him from prison or any punishment and also knows enough to tell a story that sounds credible. Thus, independent verification of such evidence is important and there is little to indicate that the Commission obtained such verification.<sup>122</sup>

Also, amnesty statements were full of hearsay allegations. An example of such is the amnesty statement of Captain Brian Mitchell, who was convicted in 1992 of 11 counts of murder arising from the Trust Feed massacre that took place in December 1988. Captain Mitchell was granted amnesty in December 1996 as he told the Commission that he was not present at the house when the massacre took place. Yet, the judge at his earlier trial had found that Captain Mitchell not only was present at the house but had also fired shots into the dwelling, so initiating the massacre. Yet, no new evidence was present to substantiate the Captain's denial of his presence at the house. Ironically, one of the members of the amnesty panel was the trial judge who had found that he had been there and had given him 11 death sentences.<sup>123</sup>

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<sup>121</sup> A. Jeffery, *The Truth about the Truth Commission*, p. 9.

<sup>122</sup> *Ibid*, p. 9.

<sup>123</sup> A. Jeffery, *The Truth about the Truth Commission*, p. 10.

#### 5.4 THE NEED FOR OBJECTIVE OPERATIONS

Ulrike Kistner, a teacher and researcher in Johannesburg, remarked that the TRC promised reconciliation through truth, but ended up sidelining those truths that could not easily be harnessed to reconciliation.<sup>124</sup> Similarly Anthea Jeffery wrote that the Commission's focus of investigation and research appears to have been one-sided since it concentrated on certain events and issues such as the role of evidence of the former Security Council, while it downplayed or ignored other events and issues that merited equal consideration. She furthermore claims that the Commission made no systematic attempt to probe the allegations made in the submissions of the "people's war" which lasted eight years involving 80 500 violent incidents resulting in approximately 9 200 individuals being killed and 18 000 wounded. This war was initiated by the ANC in the early 1980's. Also, the TRC made little attempt to investigate the role played by the Politico– Military Council of the ANC. This body was supposedly the equivalent of the State Security Council and was allegedly responsible for implementing the "people's war".<sup>125</sup>

The TRC allocated most of the blame to the UDF's strategy of "ungovernability", thus ignoring ties between the UDF and ANC in the 1980's. It also failed to take into account the fact that the fatalities continued in the early 1990's even after the UDF had been disbanded in August 1991.<sup>126</sup>

#### 5.5 VERY LITTLE CROSS EXAMINATION

The TRC took pains to ensure that the victims' interaction with the commission was a positive and affirming experience thus, little attempt was made at cross-examination. As such the veracity of this type of evidence was generally accepted unless there were glaring inconsistencies and falsehoods.

This approach required the Commission to have prior knowledge of an incident before it could access whether a victim's statement contained such flaws. An example of such obvious inconsistency is when a witness told the TRC in April 1996 that she counted no

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<sup>124</sup> Kistner, U., *Commissioning and Contesting Post-Apartheid's Human Rights*, p 11.

<sup>125</sup> A. Jeffery, *The Truth about the Truth Commission*, pp. 11-12.

<sup>126</sup> A. Jeffery, *The Truth about the Truth Commission*, p. 12.

fewer than 175 graves after the police had opened fire on protestors in Langa Township outside Cape Town in March 1990. However, this evidence seriously contradicted a judicial Commission of Inquiry, held in its wake, which found that the police had killed people and had injured a further 26. The TRC had found that 3 rather than 175 had been killed by the police in this incident. Although elsewhere in its report, the numbers of deaths recorded were two.<sup>127</sup>

Although the Appellate Division of the Supreme Court (now the Supreme Court of Appeal) ruled that the perpetrators had the right to cross-examine victims at public hearings, the TRC remained anxious to avoid placing victims under this kind of pressure and it is doubtful if cross-examination was allowed in more than a handful of instances. In general, however, victims and perpetrators were not invited to give evidence at the same hearing, thus perpetrators were given little opportunity to cross-examine their accusers.<sup>128</sup>

The Investigation Unit of the TRC was responsible for collecting evidence and the TRC emphasized that all its findings were made on duly corroborated evidence. The Investigation Unit used a standard list of corroborative pointers. Such pointers were defined as pieces of information or evidence concerning a particular incident / event / act which might assist the Human Rights Violations Committee in establishing that the information provided by the actions were true. These pointers included court records, inquests documents, death certificates and newspaper clippings.<sup>129</sup>

Jeffery, however, points out to various questions regarding the adequacy of these methods. Firstly, a death certificate might confirm a fatality and record the medical reason for it, but would not give much insight into the circumstances of the death and would not identify the perpetrators of the killing. Newspaper clippings could confirm a death but would be unable to cast adequate light on the identity of the wrongdoer(s). Inquest findings also might be inconclusive as to the culpability, an example of this is the inquest into the death of Steve Biko, a leader of Black Conscious Movement, who died in police custody in

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<sup>127</sup> *Ibid.*, p. 29.

<sup>128</sup> *Ibid.*, p. 31.

<sup>129</sup> A. Jeffery, *The Truth about the Truth Commission*, p. 32.

September 1977. The inquest found that there was no proof that his death had been brought about by an act involving an offence by any person.<sup>130</sup>

Corroboration was also obtained in other ways. Where possible individuals and, or other witnesses who had made statements were interviewed. Information was also obtained by reference to records of former government, other archival material, the databases kept by other organizations and the transcripts of the Investigative Unit and submissions made to the TRC by political parties and other organisations. On some occasions it was acquired through consultations with organisations, the state and civil society.<sup>131</sup>

Jeffery also states that interviewing dependents would have resulted in repetition of statements provided in written statements. Also, records of the former government might be incomplete in key regards and consultations with government bodies and NGO's might yield no more than hearsay. Databases compiled by other organisations could have been partial in their coverage and misleading in equal measure. So it is evident that there were great difficulties in securing full corroboration and according to Jeffery, the Commission did not for the most part even attempt this.<sup>132</sup>

## 5.6 INADEQUATE CORROBORATION ON AMNESTY STATEMENTS

Amnesty statements were according to the Commission corroborated. The Investigative Unit was asked to obtain police dockets and other relevant information from institutions like the National Intelligence Agency, the South African Police Service and the Department of Justice. In certain instances, individual applicants and victims were interviewed by only analysts and evidence leaders. In addition to this, use was made of information gathered by the Research Department and by the Intelligence Department and in contained submissions made by political organisations and liberation movements. Another source of information was the section 29 in camera hearings.<sup>133</sup> Such evidence always possesses the danger of being one-sided.

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<sup>130</sup> *Ibid.*, p. 32.

<sup>131</sup> *Ibid.*, p. 32.

<sup>132</sup> *Ibid.*, p. 32.

<sup>133</sup> A. Jeffery, *The Truth about the Truth Commission*, p. 49.

Deborah Posel and Graeme Simpson criticise the fact that the Investigative Unit and Research Department spent more time collecting information than using it. Also, most cases were not explored sufficiently. They also believe that although the human rights violations and amnesty processes both sought the truth, the former leaned towards forensic truth while the latter towards factual truth. These Committees failed to integrate their findings and the tensions between their different approaches undermined the Commission's ability to exploit the available or potential information and testimony fully. They had lost the opportunity to access considerable more information.<sup>134</sup>

It was expected that the human rights violations and amnesty processes would run concurrently but there was no classification on how they would interrelate with regard to establishing the truth of past conflicts. The two processes never really synthesized successfully because most amnesty applications were only received after the Commission had been in existence for more than a year. The recommendations to establish an amnesty database was only implemented after several months, thus when regional investigators eventually gained access to this resource in 1997, it did not provide details of what information was available.<sup>135</sup>

This was a critical problem since the amnesty applications were the most vital investigative resource for the Human Rights Committee. Even after the time frame had been extended, there was a delay in receiving these applications which meant that there were less than 12 months to investigate the human rights violations. What made matters worse was the poor quality and amount of relevant amnesty information given to the investigative Unit combined with the slow pace at which it was done. The Human Rights Violations Committee began winding up its work just when the Investigative Unit was getting to grips with some in-depth investigations. According to Posel and Simpson, much more could have been achieved if these and other investigations had been allowed to continue.<sup>136</sup>

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<sup>134</sup> D. Posel and G. Simpson (eds), *Commissioning the Past: Understanding South Africa's Truth and Reconciliation Commission*, p. 59.

<sup>135</sup> *Ibid.*, p. 60.

<sup>136</sup> *Ibid.*, p. 60.

## 5.7 INSUFFICIENT SUPPORT FOR VICTIMS

Lodge mentions the fact that the TRC did not, in the wake of its hearings, have the resources to undertake long-term counseling programmes or the social rehabilitation of victims of political crimes. In addition it failed to enlist the support of the wide range of appropriately specialized NGO's to undertake such ventures in a coordinated way. There were NGO's who did support work, including victim-offender mediation, victim counseling and public education. However, the organizations that approached the TRC for letters of support to attach to funding proposals for such operations were usually denied endorsement. In Gauteng alone, 35 organizations concerned with mental health offered their services to the TRC free of charge but most of them were not drawn into the hearings process.<sup>137</sup>

In his doctoral thesis titled *An empirical-phenomenological study of the experience of testifying at the South African Truth and Reconciliation Commission*, Rodney Thomson found that there was an urgent need for longer term psychotherapy, or other indigenous and symbolic forms of counseling to assist participants in TRC hearings to work through their experiences. He indirectly accuses the TRC for not taking the responsibility for providing a network of support to help participants work through the long term effects of their experience of testifying at the Commission hearings.<sup>138</sup>

## 5.8 RELIGION AND THE TRC

According to Graybill, it was hardly surprising that religious notions influenced the workings of South Africa's TRC since South Africa is a country that is 'Christian' in a sense that would be unrecognizable to citizens of most countries. Based on the fact that vast majority of South Africans are church going members and for whom Christianity is the most ideological frame of reference, thus biblical language and Christian discourse resonated powerfully throughout the proceedings.<sup>139</sup>

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<sup>137</sup> T. Lodge, *Bus Stop for Everyone*, p. 189.

<sup>138</sup> R. Thomson, *An empirical-phenomenological study of the experience of testifying at the South African Truth and Reconciliation Commission*, pp 82-83.

<sup>139</sup> Carl Niehaus in L.S. Graybill, *Truth and Reconciliation in South Africa*, p. 25.



Christianity was used by both the National Party (to rationalize it) and the resistance leaders (to justify the struggle against it). The National Party based their argument on the fact that they believe Christianity taught them that they were God's elect in southern Africa and that separate development was God's will and plan. For the resistance leaders, Christianity served as an ethical critique of apartheid. It was for them a source of righteous anger that inspired action and confidence that victory will eventually be achieved. Since Christianity was given so much importance in South Africa, the TRC's framework was greatly influenced by Christian thought and tradition.

The TRC grappled with truth, reconciliation, confession, guilt and forgiveness, issues such as these were also of concern to the Christian church.<sup>140</sup> The idea of reconciliation came directly from Christian theology and has been central to theological debate in South Africa for years. In 1985, the Kairos Document, called on all churches to confess their guilt for apartheid and to work for reconciliation on the basis of justice. At a conference in Rustenburg, in 1990, church leader's repented and pledged their support to work for reconciliation.<sup>141</sup>

Carl Niehaus argues that the church was irrelevant to the TRC's establishment, although it was the church's vocabulary of forgiveness, repentance and reconciliation that guided the hearings. However, during the transition phase of negotiations, the church in South Africa contributed very little theologically. Niehaus admitted that when the issue of amnesty threatened to shipwreck the whole process the church remained silent. No significant contribution was made from the religious angle with regards to confession, reconciliation and forgiveness. The interpretation of the TRC as being a compromise negotiated by political stakeholders is at odd with the widely held view that it was the church that first came up with the idea of offering amnesty (forgiveness), in exchange for the truth (confession). However, once the idea of amnesty was sorted out by the political leadership, the church and its teachings were readily available to support the process.<sup>142</sup>

Graybill is of the opinion that the personal role played by Desmond Tutu as chair of the TRC has had much to do with theology so thoroughly forming the workings of this body.

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<sup>140</sup> L.S. Graybill, *Truth and Reconciliation in South Africa*, pp. 25-26.

<sup>141</sup> *Ibid.*, pp. 25-26.

<sup>142</sup> *Ibid.*, p. 26.

Bishop Tutu recognized the centrality of reconciliation to all religious traditions and thus called on all faith communities to contribute to the TRC. He also encouraged churches to make available their resources to provide people with counseling, before, during and after the hearings. He asked mosques, churches, temples and synagogues to provide liturgies for corporate confessions and absolutions. In response to the Bishop's calls, the St George's Cathedral in Cape Town held an inter-faith service as a prelude to the work of the TRC. Commissioners were blessed by Jewish, Christian, Buddhist, Muslim and African traditional leaders and each received a candle and olive branch as symbols for the quest for truth and peace.<sup>143</sup>

On the first day of the hearings, Tutu emphasized the need for people to reach deep within their spiritual wells in order to address the challenge of healing and nation building. In addition, he expressed that Christians had a special responsibility to this because of the way certain Christian theologians promoted apartheid in the past. According to Graybill, secular critics have attacked not only the emphasis on reconciliation as opposed to justice but also the excessively religious atmosphere and discourse of the proceedings. Graybill notes that critics found Tutu an inappropriate figure to have led the hearings, faulting him on his outbursts of tears and deriding the TRC as the "Kleenex Commission". On the contrary, however, others viewed Tutu as the perfect person to have led South Africa in the process of national healing and reconciliation, given his Christian compassion and moral stature as an activist bishop.<sup>144</sup>

Within the commission itself, there was criticism of the proceedings as Fazel Rander, head of the Johannesburg office, argued that prayers and hymns did not belong in a judicial hearing.<sup>145</sup>

## 5.9 APARTHEID AND APARTHEID'S BENEFICIARIES

The TRC as the public face of the government's reconciliation agenda was often criticised for not addressing the structural violations of the apartheid system. It was also criticised for restricting its facts to the victims of killings, abduction, torture or severe ill treatment,

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<sup>143</sup> L.S. Graybill, *Truth and Reconciliation in South Africa*, pp. 26-27.

<sup>144</sup> *Ibid.*, p. 27.

<sup>145</sup> L.S. Graybill, *Truth and Reconciliation in South Africa*, p. 28.

the so called gross human violations. However, the majority of people who appeared before the TRC suffered not only because of their political affiliation and activities but also because of their gender, poverty, race and social marginalization.<sup>146</sup>

According to Hamber, the result of this narrow focus was an over-emphasis on the direct perpetrators of gross violations and an insufficient focus on the indirect beneficiaries of the apartheid system. Hamber states that the larger truth of the systematic oppression of apartheid was obscured by a 'truth' constructed solely from the testimony of individuals. Hamber argues that this mirrors the spirit of the negotiated settlement in that inclusiveness and stability are prioritized over economic justice.<sup>147</sup>

However, despite these criticisms, the TRC has largely stuck to its mandate to focus on gross violations. The TRC has also held a limited number of hearings on the sector of the society complicit in maintaining apartheid such as judiciary, business and health. Although the broader context of apartheid and the link between structural oppression and gross violations is discussed in the TRC's final report it was not very extensive.<sup>148</sup>

Hamber, however, does not believe that it is fair to blame the TRC for the government's general under-emphasis on apartheid's structural oppression since the mandate was established shortly after the negotiations and people were unaware of the economic compromises agreed by the ANC. People assumed that through the Reconstruction and Development Programme the government would address structural issues. Thus it was not necessary for the TRC to focus on these structural violations.<sup>149</sup>

Yesmin Sooka saw the inability to engage those who benefited from apartheid and those who voted for the previous government as one of the TRC's major failures. She believed that the TRC created two classes of people, those who were good and those who were bad. The good were those that planned, ordered and conspired to do the deeds while the baddies were those who entered the amnesty process and who actually pulled the triggers.

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<sup>146</sup> B. Hamber, *Who pays for peace? Implications of the negotiated settlement for reconciliation, transformation and violence in a post-apartheid South Africa*, p. 9.

<sup>147</sup> *Ibid.*, p. 10.

<sup>148</sup> *Ibid.*, p. 10.

<sup>149</sup> B. Hamber, *Who pays for peace? Implications of the negotiated settlement for reconciliation, transformation and violence in a post-apartheid South Africa*, p. 10.

Politicians had actually escaped any real threat of prosecution as they never soiled their hands with actual deeds and this was contrary to expectations of accountability.<sup>150</sup>

The beneficiaries of apartheid according to Sooka hardly had to change their lifestyles at all. Many of these people at first denied victims' stories, saying they were not true but as stories were told of more horrible deeds; they said that they did not know these things were happening. Sooka says that the denial needs to be looked at and that the privileged always has a price .i.e. the oppression of others, the people that advocate "we need to forget the past and move on are those who continue with their lives, they go to court, obtain permission to close off their streets and have boom controlled systems in place designed to keep black people out of their suburbs. They can go on because they have something to go on with.

However, many beneficiaries are conscious of this legacy and really wish to atone but there is a need for them to make a contribution to the victims. Sooka mentions that the TRC should look at a possible wealth tax for the beneficiaries of apartheid.<sup>151</sup>

Dumisa Ntsebeza, who was on the TRC staff, collaborated with Terry Bell in writing a book on the Commission. Their final conclusion is that the TRC did not at all reveal the truth about the apartheid past. Bell and Ntsebeza provide some examples of aspects of the apartheid system that were not, in their estimation, investigated extensively enough. These include the Afrikaner Broederbond, Operation Daisy and the State Security Council. The authors furthermore pay a lot of attention to conflicts among the TRC staff, especially with regard to Ntsebeza himself. Their final conclusion is that the TRC did not dig deeply enough to reveal the truth about many human rights violations. Consequently it left behind a mass of unfinished business.<sup>152</sup>

A decade after the launching of the TRC these sentiments were still uppermost in the minds of commentators. Speaking at an event in Cape Town in April 2006 to mark the tenth anniversary of the establishment of the TRC, Kader Asmal echoed these views. He said that one of the weaknesses of the TRC was that it did not put into question the

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<sup>150</sup> Y. Sooka, *The unfinished business of the TRC. From rhetoric to responsibility: making reparations to the survivors of past political violence in South Africa*, p. 7.

<sup>151</sup> *Ibid.*, p. 8.

<sup>152</sup> Bell, T. (in collaboration with Dumisa Buhle Ntsebeza), *Unfinished business*, pp 287-289.

apartheid state as an institution, but instead focused on individual cases of human rights abuses. Consequently former president F.W. de Klerk was never forced to accept that the apartheid state was what Asmal called a “criminal conspiracy”.<sup>153</sup> Brian Raftopoulos pointed out in an article in the *Cape Times* that the major limitation of the TRC was its silence on the institutional effects of apartheid, including Bantu Education, forced removals, job reservation and economic exploitation.<sup>154</sup>

The fact that so few supporters of Inkatha, who happened to be among apartheid’s main beneficiaries, came forward to give evidence to the TRC has also meant that the Commission’s findings were somewhat skewed.<sup>155</sup>

## 5.10 FORGIVING THE UNFORGIVABLE

Although the need to solicit forgiveness was not part of the TRC’s mandate by virtue of its importance it became a central feature in the TRC’s attempt to deal with truth and promote reconciliation. However, it became quite a contested issue during the course of the TRC’S work. As G. O’Malley pointed out, many witnesses to the TRC found that ‘truth’ and ‘reconciliation’ did not automatically amount to ‘justice’. Indeed, ‘justice’ was often traded for ‘truth’ and ‘reconciliation’.<sup>156</sup> This happened, according to Kistner, because “‘truth’ was frequently recovered at the cost of the removal of criminal liability of the perpetrators.”<sup>157</sup>

The government was aware of this criticism but continued to promote the moral priority of reconciliation. Thus Johnny de Lange, a prominent ANC Member of Parliament, wrote that: “In our country ... reconciliation is pivotal to the process of bringing justice to all, but not justice in its narrowest sense, the kind that demands trial and punishment.”<sup>158</sup>

To Gruchy forgiveness includes moral accountability but cannot replace justice, it goes beyond justice. If perpetrators got away with their crimes, then the rule of law is

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<sup>153</sup> Mkhabela, M., “Tutu lashes out at white South Africans in TRC debate”, *City Press*, 2006/04/23, p 6.

<sup>154</sup> Raftopoulos, B., “The gains and perils of reconciliation”, *Cape Times*, 2006/05/04, p 1.

<sup>155</sup> Carter, C., “Threatening to become a cold case”, *Saturday Weekend Argus*, 2006/04/08, p 15.

<sup>156</sup> O’Malley, G., *Respecting Revenge: The Road to Reconciliation*, p 13.

<sup>157</sup> Kistner, U., *Commissioning and Contesting Post-Apartheid’s Human Rights*, p 12.

<sup>158</sup> De Lange, J., “The historical context, legal origins and philosophical foundation of the South African Truth and Reconciliation Commission”, p 23.

undermined. However if their punishment had no redemption possibilities, then, the divisions in society will be deepened. This could have increased enmity and resentment. Thus preventing reconciliation and encouraging vengeance. Forgiveness will seek to prevent the perpetration of the cycle of violence, which unfortunately leads to the undermining of the rule of law. Gruchy explains that forgiveness seeks to establish a just moral order that builds communities and restores humanity. Gruchy believes that telling the truth about the past alone does not heal but could in fact lead to acts of violent vengeance and the only way to break this is to have the moral courage to forgive.<sup>159</sup>

Graybill mentions that many criticized the very framing of the issues in terms of repentance and forgiveness, which they saw as uniquely Christian concepts thus alienating to South Africans who did not come from the Christian faith. Graybill mentions the fact that one academic at a conference in Cape Town in 1996 expressed horror at Bishop Tutu' thanking a mother for her sacrifice of her husband to the cause. She continues to say that victims have also complained about the "imposition" of a Christian morality of forgiveness.<sup>160</sup>

In a letter to the *Mail and Guardian* a person expresses the common complaint that they did not understand how Desmond Tutu identified reconciliation with forgiveness. The person was not Christian and thought that it was grossly immoral to forgive that which was unforgivable.<sup>161</sup>

What the Commission ideally expected was for perpetrators to repent for their sins and victims to offer forgiveness, leading to reconciliation between individuals and ultimately for the nation at large. Tutu encouraged this process by inviting perpetrators to apologize to victims and families of victims. He believed that forgiveness would be forthcoming from their victims or their families. Tutu urged political leaders to make pilgrimages to the sites of atrocities committed by their supporters and to apologize to the victims. He suggested that President Mandela go to Church Street in Pretoria where a car bomb exploded outside the air force headquarters, that F.W. de Klerk represent the National Party at the site of the Boipotong massacre, that Stanley Magoba of the PAC call on the St James Church in Kenilworth in Cape Town where PAC supporters killed white

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<sup>159</sup> F. van Zyl Slabbert, "Truth and reconciliation, reconciliation without truth", in W. James and L. van de Vijver (eds), *After the TRC reflections on truth and reconciliation in South Africa*, p. 170.

<sup>161</sup> L.S. Graybill, *Truth and Reconciliation in South Africa*, p. 39.

worshippers; that Mangosuthu Buthelezi of the IFP visit Kwa-Mokhutu, where ANC supporters were killed by police who sided with the IFP.<sup>162</sup>

However, it should be remembered that the Promotion of Unity and Reconciliation Act, provided that merely amnesty be granted in exchange for all disclosure, thus remorse was not a requirement. Graybill argued that victims could not forgive when perpetrators had not apologized and that forgiveness was two sided, requiring not only mercy on the part of the persecuted but also repentance on the side of the oppressor.<sup>163</sup>

### **5.11 NATIONAL PARTY'S REFUSAL TO APOLOGISE**

Graybill even mentions the fact that former president F.W. de Klerk refused to apologize for actions of the previous National Party government and that during the four years of negotiations leading to elections, there was no reference made by the National Party to the immorality of creating and maintaining a system of exploitation based on strict racial segregation. De Klerk's motivation for this was that apartheid was not inherently wrong and no evil intent had motivated its architects and the reasons behind De Klerk's reforms were not the belief that apartheid was wrong or sinful but simply that it failed to work.<sup>164</sup>

Graybill continues to mention that this attitude of denial had not changed with the National Party's submissions to the TRC. De Klerk, while speaking for the National Party during his first presentation denied that he or his cabinet had planned murders, tortures or assassinations of opponents. He continued to maintain that while the National Party accepted responsibility for political decisions taken when it was governing, it could not be held accountable for unauthorized actions by "maverick elements" committing cold blooded murders, which he still insisted was not the policy of his government. In response to a series of questions posed to him by the TRC, De Klerk insisted that he was as shocked as anyone on hearing of acts committed by a "handful of operatives" in the police and military and could not accept that the government's policies gave security forces a "license to kill". However, when presented with a document that showed he was present at a cabinet meeting in 1986 when a decision was made to create a security force that would

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<sup>162</sup> L.S. Graybill, *Truth and Reconciliation in South Africa*, pp. 39-40.

<sup>163</sup> *Ibid.*, p. 40.

<sup>164</sup> *Ibid.*, pp. 40-41.



“eliminate the states’ enemies”, De Klerk denied that “eliminate” meant to kill. This statement was found not credible by the TRC commissioners.<sup>165</sup>

However, at subsequent amnesty hearings former cabinet minister Adriaan Vlok, police commissioner Johan Van Der Merwe and former Vlakplaas commander Eugene De Kok all testified that while P.W.Botha had given the actual orders for their deeds, that De Klerk had known about the bombing of COSATU House (Congress of South African Trade Unions- headquarter), Khotso House (South African Council of Churches-headquarter) and movie theatres screening “Cry Freedom”. De Klerk strongly denied this. However, Graybill adds that De Klerk denied knowing but did not deny having any part in the decisions. The “Beeld” newspaper editorialized that it was a shame that a leader who had played such a major role in achieving peace in the country could have minimized his contribution to reconciliation.<sup>166</sup>

Graybill mentions that commentators noted that De Klerk could have ruined his chances for reconciliation by refusing to come to terms with the past. Graybill also mentions P.W Botha’s refusal to apologize. South African theologians who penned the Kairos Document after 1985 state of emergency argued that reconciliation is not possible without true repentance and that reconciliation can only follow white repentance and a clear commitment to any crucial change.

Graybill notes that many TRC observers were disturbed by the lack of the requirement to be remorseful in order to get amnesty whereas the emotion remorse is taken into consideration in a court of law when sentencing is due. “Reconciliation” to these critics was just a code word for simple forgiveness on the part of the victims, with all the movement coming only from the side of the victim. Graybill feels that if the perpetrators cannot be forced to repent then neither should the victim be forced to forgive. And that nothing in the legislation required either repentance or forgiveness.<sup>167</sup>

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<sup>165</sup> L.S. Graybill, *Truth and Reconciliation in South Africa*, p. 41.

<sup>166</sup> *Ibid.*, p. 42.

<sup>167</sup> L.S. Graybill, *Truth and Reconciliation in South Africa*, p. 43.



## CHAPTER 6

### POSITIVE ASPECTS OF THE TRC

In this chapter the aim is to create the awareness that there were many positive aspects of the TRC. Although many writers have criticized the TRC, the very same writers could not deny the positive aspects of the process. As Annelies Verdoolaege has pointed out: “According to many people, the TRC has achieved a lot, especially on the level of establishing the truth about apartheid or creating an officially acknowledged past.”<sup>168</sup> In this chapter then an attempt is made to create a balance between the positive and negative aspects of the Commission. This will prove that the TRC was not a wasted exercise.

Verdoolaege points out that since during the apartheid period, the Chairperson of the TRC, bishop Desmond Tutu, was known for his attitude of reconciliation and forgiveness, it is not surprising that his personal description of the TRC is extremely positive. In his book *No Future without Forgiveness: A personal overview of South Africa's truth and reconciliation commission*, Tutu stresses that the TRC certainly brought justice for the victims. This was not only achieved through the public confessions of the perpetrators, but also through the recommendations of reparations. Tutu assures his readers that the TRC attempted to be even-handed. He highlights some outstanding examples of reconciliation and compares it with examples of extreme human evilness. Tutu has no doubt that remembering the past is crucial in dealing with the past. He believes that the South African TRC can serve as an example of how to deal with the traumatic legacy of conflicts in the rest of the world. Finally he states that the TRC had convinced him that humans are evil, but that hope, reconciliation and peace will always win.<sup>169</sup>

In an address to the Nelson Mandela Foundation in 2004 under the title “We should celebrate and trumpet our achievements”, Tutu was equally enthusiastic about the TRC, calling it a remarkable institution. He pointed out that before 1994,

many [people] had thought that the advent of a black-led government would signal an orgy of revenge and retribution against whites. Instead, the world stood open-mouthed at the revelation of such nobility of spirit, such

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<sup>168</sup> Verdoolaege, A., *The debate on truth and reconciliation: A survey of literature*, no page numbers.

<sup>169</sup> Verdoolaege, A., *The debate on truth and reconciliation: A survey of literature*, no page numbers; Tutu, D., *No future without forgiveness*.

magnanimity as victims of the most gruesome atrocities forgave their tormentors and even on occasion embraced them. We were all traumatised, wounded by the awfulness of apartheid and the TRC helped to open wounds that were festering, cleansed them and poured balm on them to help in the healing of us, the wounded people of this beautiful land.<sup>170</sup>

Albie Sachs, who is a Constitutional Court Judge, answers the question of the purpose of the TRC – to help humanize South Africa and to move away from abstract characteristics and categories. Thus, he feels that there was reason enough for exposing the cases of torture, assassination and violence, since these cases were hidden and denied they were also criminal even in terms of the laws of apartheid. Attacking these cases not only revealed the agony of the individuals, but also exposed the system which gave rise to them, which covered up and condoned them. He believes that the TRC was a powerful counter attack against extreme forms of immorality that were rooted in systematic and organized injustice.<sup>171</sup>

According to Sachs, reconciliation does not require a victim to forgive each perpetrator, or for them to embrace. It involves an understanding of how things happened and in what context also what was done and who done it. It is in his view that only when this understanding is reached, can the nation move forward. He argues that reconciliation lies in converting knowledge to acknowledgement of the pain of the victim's speaking for themselves. It also lies in the perpetrators acknowledging, even in a limited way at least something of what they did. To Sachs reconciliation means that the nation and the world acknowledging the terrible things had happened in our country.<sup>172</sup>

Sachs believed that the TRC was a platform, a vehicle, an arena for voices to be heard. There were no victims or losers and it gave everybody an opportunity to be looked at.<sup>173</sup> Sach's responds to critiques of amnesty being incompatible with justice. He sees the process of sending someone to jail or repaying the money in this process as not being justice. He sees the machinery for prosecution being dominated by the same people who

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<sup>170</sup> Tutu, D., "We should celebrate and trumpet our achievements", *Star*, 2004/11/24, p 19.

<sup>171</sup> Sachs, A., "His name was Henry", in W. James and L. van de Vijver (eds), *After the TRC reflections on truth and reconciliation in South Africa*, p. 96.

<sup>172</sup> *Ibid.*, pp. 96-97.

<sup>173</sup> *Ibid.*, p. 98.

were implicated in the crimes. For Sachs this approach is limited as the final objective was that people should live together in this country.

He argues that perpetrators paid a price by coming to the process, being, nervous and receiving counseling for post-traumatic stress. They had to confess in front of family and friends their most grievous crimes. The victims too received information, that which they never knew about, where the alternative would have been nothing. The victims' pain was acknowledged, bodies were recovered and honoured and sacrifices were acknowledged as an integral part of the terrible trauma that gave rise to the new South Africa.<sup>174</sup>

However, Sachs does agree that there is still much to be done in terms of reparation. He feels that money is just not enough for a person's life, that it cannot humanize and restore dignity. Symbolic reparation is important.<sup>175</sup>

Sachs' focus on restorative justice is shared by numerous other commentators on the South African TRC. In her study on the literature on the TRC Verdoolaege points out that a large number of publications are outspoken about the positive aspects of restorative justice. The TRC is in those publications considered as an ideal example of restorative justice, which does not aim at achieving individual satisfaction or compensation, but at establishing equality, humanity and respect among members of a society. Where restorative justice is the objective, criminal trials are often not desirable, since criminal trials tend to concentrate on the perpetrators. This is not the best option in a society that aims at restoring the dignity of the victims. Because of the advantages of restorative justice, many commentators are convinced that the TRC brought justice to the victims. Justice was not only achieved because the Commission paid tribute to the victims, but was also achieved through the perpetrator's shame of public exposure and through the reparation policy.<sup>176</sup>

According to Richard Goldstone, the TRC rendered an important service to our nation by graphically illustrating what happens in a country that operates under an undemocratic constitution. In addition, it has also illustrated how the negation of the rule of law made

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<sup>174</sup> Sachs, A., "His name was Henry", in W. James and L. van de Vijver (eds), *After the TRC reflections on truth and reconciliation in South Africa*, p. 99.

<sup>175</sup> *Ibid.*, p. 99.

<sup>176</sup> Verdoolaege, A., *The debate on truth and reconciliation: A survey of literature*, no page numbers. See for example A. Boraine, *A country unmasked*, p 427.

possible the criminal violence perpetrated on so many victims by the state and even from outside the government. It allowed for corruption, fraud and other illegal means of self-enrichment on the part of those whose duty it was to use the resources for the benefit of all its' people.<sup>177</sup>

John de Gruchy believes that the painful dissecting of apartheid during the hearing of the TRC has not only happened to understand the real meaning of crimes against humanity but it has also given vivid intimations of the kinds of society we should strive for. By this he explains: a society that cares about truth, about justice and victims and cares about the healing of wounds and the flourishing of human life. The TRC has set a testimony to what happens to society when it disregards moral values.

Gruchy points out that the success or failure of the TRC depends largely on whether we succeed in taking its work seriously. In addition to this, he believes the TRC has opened up a debate that has reinforced our awareness of the urgent need to build a moral culture.<sup>178</sup>

De Gruchy defends the TRC's mandate to reveal the truth by insisting that it was morally justified and that it lays the foundation for a truly reconciled nation. In order to build a moral culture, one needs to know the truth about the past. De Gruchy believes without such knowledge, we would remain captive to our past. However, the real moral test is what we do with the truth.<sup>179</sup>

Society, has to honour victims moral claim. Thus, the TRC has to take seriously its reparations, or this will inevitably undermine the building of a moral culture. As a society, Gruchy says that we need to demonstrate that we care adequately for those who were victims of injustice and violence or natural disaster.<sup>180</sup>

Bizos explains that the TRC enabled victims and survivors to deal with their anger in non-violent ways, and it helped South Africa avoid further conflict. He believes that had the

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<sup>177</sup> R. Goldstone, "The rule of Law", in W. James and L. van de Vijver (eds), *After the TRC reflections on truth and reconciliation in South Africa*, p. 15.

<sup>178</sup> J. de Gruchy, "The TRC and building of a moral culture", in W. James and L. van de Vijver (eds), *After the TRC reflections on truth and reconciliation in South Africa*, pp. 167-168.

<sup>179</sup> *Ibid.*, p. 169.

<sup>180</sup> *Ibid.*, in W. James and L. van de Vijver (eds), *After the TRC reflections on truth and reconciliation in South Africa*, p. 10.

TRC not been established; South Africa would have found itself in a full blown civil war.<sup>181</sup>

According to Graybill, the TRC was certainly not perfect but was indeed a compromise between the “morally” ideal and politically possible. Graybill adds that if justice depended upon groups agreeing to a tolerable solution to inevitable conflict, then the TRC met that requirement. The TRC marked an important stage in coming to understanding South Africa’s past even though it was flawed and subject to criticism and that it could possibly lead to co-existence in a once deeply divided society. Graybill states that much more needs to be done over the period of many years and that only time will determine the TRC’s ultimate effectiveness in reconciling South Africa.<sup>182</sup>

Jose Zalaquette, who played a major role in the Chilean Truth Commission had great expectations for the TRC process in South Africa. Zalaquette believes that three prerequisites for success had manifested over the past decade, in the first place, the nation had to accept ownership for the process, secondly, the government needs to show political will, not only to appoint and provide the commission with an infrastructure but also to implement the proposals made by the commission at the end of its course. Thirdly, according to Zalaquette, the process of inquiry must stop and the commission should not last too long.<sup>183</sup>

According to Piet Meiring it was not difficult to determine whether the first two prerequisites had been met. Although the government set the process in motion with the support of most political parties and maintained the infrastructure, not all proposals were dealt with as set out by the Commission.<sup>184</sup>

According to Meiring, the first prerequisite is quite difficult to access and it was, at the time when he wrote his book, far too early to do so. He speculates that maybe, by the next generation or two, it would be clear whether the TRC had achieved its goals. However for the 21 400 victims and their families who had submitted their stories in writing, or told them at the hearings, it was a healing experience. There were those who returned home

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<sup>181</sup> G. Bizos, *The Provocations of Amnesty*, p. 6.

<sup>182</sup> L.S. Graybill, *Truth and Reconciliation in South Africa*, pp. 177-178.

<sup>183</sup> Zalaquett, J., “Why deal with the past?”, pp 8-15.

<sup>184</sup> P. Meiring, *Chronicle of the Truth Commission*, pp. 370-371.

disappointed and frustrated but for the great majority it was a cathartic experience, even though it was a difficult one.<sup>185</sup>

As far as amnesty was concerned, Meiring felt that it gave perpetrators who lived under a cloud for years, the opportunity for a new life even though there were some serious objections from high profile families of victims such as the Biko, Mxenge and Goniwe families who saw the process as extremely unfair towards the victims. They fought the amnesty legislation right up to the Constitutional Court. Meiring believed that the process was as “victim friendly” as it was “perpetrator friendly.”<sup>186</sup>

Meiring believes that most black and brown South Africans who were at the receiving end of apartheid were grateful for and satisfied with the work of the TRC. He mentions the fact that many communities welcomed the TRC in their towns and black newspaper and television remarks were generally positive. There were some critical comments at times especially when Arch Bishop Tutu bend over too far backwards to accommodate whites in particular former President P.W Botha.<sup>187</sup>

The white community according to Meiring found the TRC process difficult in the sense that it was painful for them to confess and admit their own part in it and ask for forgiveness and reconcile.<sup>188</sup>

However at the end of the TRC Meiring points out that many who had first stood aloof, watching , signed on as fellow travelers. Many Afrikaans and English speaking whites faced the questions they were really afraid of asking such as , did this really happen and were such atrocities possible by “ our people.”<sup>189</sup>

Meiring mentions the moving scenes in the pulpit of the Lynnwood congregation when a black bishop and a white minister reached out to each other and embraced with tears running down their cheeks. This after years of injustice and misunderstanding, the

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<sup>185</sup> P. Meiring, *Chronicle of the Truth Commission*, p. 371; Verdoolaege, Annelies, *The debate on truth and reconciliation: A survey of literature*, no page numbers.

<sup>186</sup> P. Meiring, *Chronicle of the Truth Commission*, p. 373.

<sup>187</sup> *Ibid.*, pp. 373-374.

<sup>188</sup> *Ibid.*, p. 374.

<sup>189</sup> *Ibid.*, pp. 374-375.

congregation stood up and clapped and did so on behalf of scores of fellow countrymen in all corners.<sup>190</sup>

According to Alex Boraine, there were many who would argue that an achievement of the Commission was not to perpetuate the myth of the so-called rainbow nation where everyone claims to love one another but rather to reveal the serious division that exists. The acknowledgement of this division was the first step towards bridging it. Also, someone who has never come to terms with deep hurt and anger will be blighted by unresolved memories forever. Boraine believes that the Commission can claim some credit for helping many to face up to the truth of the past, with all its horror and shame, not to dwell or live in it but to move past it. Anger acknowledgement could be as healing as the acknowledgement of suffering and grief.<sup>191</sup>

Advocate Richard Penwill who was initially skeptical of the Commission's establishment later acknowledged that the Commission did not aim at a conclusion so much as a process. This process was aimed at confronting the injuries and injustices of the past and coming to terms with them and was designed for the purpose of recrimination. Penwill believed that this institution achieved what a court could never have achieved. Penwill agrees that the achievement of the TRC's open policy of hearing evidence is that a large number of victims and their families have been able to come forward and tell their stories. Much of the testimony consists of moving descriptions of human suffering which otherwise gave unacknowledged and unknown to the wider spectrum of society. While acknowledging the fact that many South Africans were distressed by the provisions of amnesty, he feels it encouraged people to testify and resulted in the hearing of evidence which otherwise would not have surfaced.

According to Boraine, reconciliation began when President De Klerk announced in Parliament on 2 February 1990 that the liberation movements were to be unbanned, that political prisoners would be released and that negotiations would start. This he agrees was a very important beginning of reconciliation in South Africa.<sup>192</sup>

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<sup>190</sup> P. Meiring, *Chronicle of the Truth Commission*, p. 375.

<sup>191</sup> A. Boraine, *A Country Unmasked*, p. 343.

<sup>192</sup> A. Boraine, *A Country Unmasked*, p. 345.



Professor Jakes Gerwel adds that we should acknowledge and be reminded that the Commission was never expected to reconcile the nation, that the process of reconciliation had begun before its establishment and its job was to encourage the continuation, development and promotion of that reconciliation in every area of society. Gerwel emphasized the need to balance our approach to reconciliation. We ought to make a distinction between acts of personal reconciliation between individuals and reconciliation which comes through political and social structures, whether it be local, provincial or national.<sup>193</sup>

Boraine stresses that the Commission was implicit in its work and its recommendations to government to accept fact that although reconciliation is crucial, it was impossible that all people could be reconciled.<sup>194</sup>

Karin Chubb (who is a lecturer at the University of the Western Cape and was vice-president of the Black Sash for several years) and Lutz van Dijk (who is an author of several books) saw the immense significance of two crucial areas which were negotiated : that a general blanket amnesty which was being demanded by the old regime was rejected in favour of individual amnesty. The basis of which was carefully evaluated in each individual case. Without the proviso “amnesty for truth” and “complete disclosure,” they believe would have been a continuation of the civil war and a bloodbath would have been unavoidable. They felt that this formed a deeply credible foundation for the work of the TRC.<sup>195</sup>

Included in this was the fact that the witnesses were the central focus of all the human rights violations hearings. Their stories were shown respect and acknowledged in many ways during the proceedings. This made the character and spirit of the South African Commission unique and characterized its image on the national and international stage.<sup>196</sup>

What was achieved visibly and publicly was a complete break with the “scoring of others.” This ethic was also extended to perpetrators. Every witness could speak in his/her

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<sup>193</sup> Quoted in A. Boraine, *A Country Unmasked*, p. 348.

<sup>194</sup> *Ibid.*, p. 348.

<sup>195</sup> K. Chubb and L. van Dijk, *Between anger and hope: South Africa's Youth and the Truth and Reconciliation Commission*, pp. xiv-xv.

<sup>196</sup> *Ibid.*, p. xv.



own mother tongue and psychological support offered to all. Witness had the right to tell the truth subjectively, “convincing proof” was not required.<sup>197</sup>

According to Richard Goldstone, if the TRC had not been, there would still have been widespread denials of the worst manifestations of apartheid and these denials would have been accepted by the majority of white South Africans. Goldstone believes that court proceedings would not have had the same effect and would not have elicited a comparable degree of media attention. Besides television coverage and extensive newspaper reporting during the hearings, a substantial proportion of the TRC Report was published in supplements in the major daily newspapers.<sup>198</sup>

Lodge states that comparative international experience suggests that the South African TRC embodied a more ambitious form of official acknowledgement of wrong doing than has been attempted elsewhere. He admits that the ritualistic dimensions of the Commission probably did have a comforting effect of individuals and neighbourhoods affected by the violence. In fact in most cases especially among black South Africans, the activities of the TRC seemed to have evoked wider social approval. Lodge admits that the Commission certainly endowed the administration of amnesty with a degree of legitimacy which is invaluable, by compelling powerful officials and political leaders both past and present to explain the ways in which their organizations and subordinates behaved, the South African Commission did establish a new bench mark for public accountability of those in authority.<sup>199</sup>

David Thelen believes by having public hearings and by witnesses giving testimony, the past became something to reinhabit and not so much to explain. Some of the reenactments that occurred during the hearings opened events that looked closed, as reenactment challenges the notion that history is about events that are closed. It helped in recognizing how individuals in the past contained capabilities within themselves that we can learn from and exercise.<sup>200</sup>

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<sup>197</sup> K. Chubb and L. van Dijk, *Between anger and hope: South Africa's Youth and the Truth and Reconciliation Commission*, p. xv.

<sup>198</sup> Goldstone, R., “The rule of Law”, in W. James & L. van de Vijver (eds), *After the TRC reflections on truth and reconciliation in South Africa*, pp. 123-124.

<sup>199</sup> T. Lodge, *Bus Stop for Everyone*, pp. 203-204.

<sup>200</sup> D. Thelen, *How the Truth and Reconciliation Commission Challenges the Ways we use history*, p. 169.

By pivoting history on reenactments, the historical art would not be to transport people to the things they said or did in the past, but to the open-endedness that participants originally faced.<sup>201</sup>

The Commission recreated what victims went through in their own voices, it was not merely the case of telling a story with a beginning, middle and an end.<sup>202</sup>

According to Thelen, the point of recovering open-endedness was not mainly to explain what had happened but to re-enact how they had framed their choices and decisions to recover and weigh alternatives and to think about how they and their hearers now wished they had acted then. As they reconsidered what they or others had done, they unleash feelings and emotions like pride, regret, anger, grief and guilt. In addition, they explored choices for taking responsibility in the present for their choices such as apologise, forgive, rehabilitate, avenge, recant, repair or revenge. This process helped in taking responsibility for their original actions.<sup>203</sup>

Thelen mentions that many victims and particularly families of victims wanted the TRC to open things up by making it possible for them to see beyond the choices of their perpetrators.<sup>204</sup>

Looking back more than five years after the TRC ended its activities, the Eastern Cape based daily *The Herald* commented that the TRC was, despite its shortcomings, right for South Africa. By on the one hand providing the “victims” and their relatives an opportunity to “tell their stories” publicly, and on the other hand offering amnesty to perpetrators under specific conditions, it paved the way to a better future. “We had no other option if we were to escape the past and tackle the task of creating a society that would stand as a permanent monument to those who suffered as a result of racial ideology”.<sup>205</sup>

A number of voices from the mainstream Afrikaner establishment praised aspects of the work of the TRC. Thus a journalist of the Afrikaans daily *Beeld* wrote in 2006 that the

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<sup>201</sup> D. Thelen, *How the Truth and Reconciliation Commission Challenges the Ways we use history*, p. 170.

<sup>202</sup> *Ibid.*, p. 171.

<sup>203</sup> *Ibid.*, p. 172.

<sup>204</sup> *Ibid.*, p. 174.

<sup>205</sup> Editorial, *The Herald (EP Herald)*, 2005/09/22, p 4.

Commission played a decisive role in the change-over to the democratic dispensation in South Africa. Furthermore the Commission enabled and assisted many South Africans to make peace with the past and to rather focus on the future.<sup>206</sup> An Afrikaans historian, Marietjie Oelofse of the University of the Free State, wrote in 2004 that one of the positive outcomes of the TRC was the empathy that developed between victims and perpetrators. She was especially impressed by the extraordinary capacity and willingness on the part of some victims to forgive perpetrators.<sup>207</sup>

The controversial Afrikaans journalist Max du Preez is similarly extremely positive about the TRC. He explained that:

I have no doubt in my mind that we as a nation would not be where and what we are today if we had not gone through those therapeutic four years of TRC hearings. ... If we had chosen to go the route of war crime tribunals, and sent dozens of apartheid politicians and their foot soldiers to jail, we would most likely not have had the peace and stability we are enjoying right now. If we had chosen to declare a general amnesty and ignored the past, the levels of black resentment would never have subsided.<sup>208</sup>

In her very personal account of the TRC, titled *Country of My Skull*, the Afrikaans writer and journalist Antjie Krog is somewhat critical of the Commission, but her overall conclusion is positive. She points out that the TRC had broken the silence about South Africa's violent past and had showed the way to a culture of human rights and national unity. She writes in poetic language that:

With all its mistakes, its arrogance, its racism, its sanctimony, its incompetence, the lying, the failure to get an interim reparation policy off the ground after two years, the showing off – with all of this – it has been so brave, so naively brave in the winds of deceit, rancour and hate. Against a flood crashing with the weight of a brutalizing past on to new usurping politics, the Commission has

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<sup>206</sup> Du Toit, F., “Waar ons vandaan kom, kan help met waarheen ons gaan”, *Beeld*, 2006/04/19, p 13.

<sup>207</sup> Oelofse, M., Restoring the human spirit: the Truth and Reconciliation Commission and the place of forgiveness in the reconciliation of the Rainbow Nation, *Journal for Contemporary History* (Bloemfontein), 2004/12/31, p 214.

<sup>208</sup> Du Preez, M., “Reflect on history through new eyes”, *Star*, 2005/06/30, p 22.

kept alive the idea of a common humanity... For all its failures, it carries a flame of hope and makes me proud to be from here, of here.<sup>209</sup>

Martha Minow believes that the South African TRC was the best way to deal with the past. It had positive results since it opted for acknowledgment and remembrance instead of vengeance or forgiveness. Minow argues that a truth commission is a better choice than for example a criminal tribunal, since a truth commission enhances the humanity and dignity of the victims.<sup>210</sup>

Looking back a decade and longer after the launching of the TRC, commentators still believe that the Commission was a major achievement, since it gathered vital information on the human rights abuses of the apartheid era, provided a forum for public testimony and, to a more limited extent, “confession”.<sup>211</sup> Moreover, it initiated a process during which people acknowledged the past and developed a shared memory by remembering it, which can lead to a transformation in attitudes.<sup>212</sup>

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<sup>209</sup> Krog, A., *Country of my skull*, p 278; Verdoolaege, A., *The debate on truth and reconciliation: A survey of literature*, no page numbers.

<sup>210</sup> Minow, Martha, *Between vengeance and forgiveness*; Verdoolaege, A., *The debate on truth and reconciliation: A survey of literature*, no page numbers.

<sup>211</sup> Raftopoulos, B., “The gains and perils of reconciliation”, *Cape Times*, 2006/05/04, p 1.

<sup>212</sup> Oelofse, M., Restoring the human spirit: the Truth and Reconciliation Commission and the place of forgiveness in the reconciliation of the Rainbow Nation, *Journal for Contemporary History* (Bloemfontein), 2004/12/31, p 219.

## CHAPTER 7

### CONCLUSION

It stands to reason that only time will tell whether the TRC was an important determining factor in South African history or a wasted effort. However, from a different standpoint, the fact that South Africans have as a nation faced their past and made a conscientious effort to reconcile the past with the future is in itself an achievement. Many, South Africans would not have been comfortable with the idea that they have proceeded from apartheid rule to all-inclusive democracy and no single group, party or government is accountable for all the atrocities that had taken place. South African people were given the opportunity to right what they had wronged.

As indicated in this mini-thesis, most of the commentators agreed the punishment by means of a jail sentence or worse, or other forms of wide-ranging prosecutions would not have been a good idea in all cases or most cases as it would be a constant reminder of the past. In extreme cases of gross human rights violations, prosecutions were necessary and gross perpetrators such as Eugene de Kock are serving life sentences in prison. Perhaps there should have been a bench mark that was set by the Commission on what was considered gross and what was not. The idea of reconciling people was to move away from all the suffering that had occurred over the years. Denying a hearing would in essence just mean that the country was turning a blind eye to what has happened. From that point of view, a country cannot continue forward successfully. People need to be told and shown that the atrocities of the past was wrong and that it should not occur in the future. By not having the Commission, the message would have been that whatever happens, it can be ignored. South Africans needed acknowledgment that apartheid was wrong and that the wrongdoers were accountable.

Reconciliation was a very important process in South African history. The TRC brought this to the fore. It was a concept previously unfamiliar to people in South Africa. There is no doubt that reconciliation cannot take place without forgiveness, but forgiveness cannot be forced as it is an emotion from within each person. It would have been unreasonable to expect all victims or families of victims to forgive or reconcile, but at least them knowing

the truth would bring some type of closure for those who previously had no answers. Forgiveness and reconciliation was up to the individual, but facilitated by the state.

Forgiveness was a very crucial aspect of the TRC, however, healing is something that cannot be achieved overnight. South Africa as a society will probably heal in the years to come. Of importance is that wounds were not left open as this would fester and would not heal. South Africa needed closure and the attempt was made by the TRC. Many families found closure at the TRC and although there were still many unanswered questions, no one could have expected the process to be 100% perfect. A whole nation cannot find peace at the same time as people were affected in many different ways. The TRC was not aimed at satisfying a country but at achieving peace within individuals. And considering the fact that many found closure then it could have not been a wasted exercise.

In this mini-thesis it was clearly established that the commissioners of the TRC were sure of one thing: that the process was necessary. Even if the process did not yield perfect results, it was still a necessary process. One can almost say that it was inevitable that the TRC would have been a flawed mechanism and would in some cases have opened out wounds. These were unavoidable. There had been immense pain and therapy is rarely easy and almost always incomplete. That does not mean that no therapy should be attempted. Commentators generally agreed that burying the past would have been the worst option for the new South Africa as the new dispensation would have started off on a lie and no new democracy could afford this. South Africa needed to firmly establish its democracy and political legacy.

The TRC was not a court of law but a method of remembrance and a way of developing shared memories. The TRC offered South Africa a chance to get on with forging shared values and attributes allowing the people to remember and not forget but of course to learn from memory.<sup>213</sup>

Even though the TRC was seen by some commentators as an attempt by the ANC government to win over support of the white people, the fact is that the individual voices of thousands of South Africans were heard, many of whom would have been lost and

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<sup>213</sup> K. Christie, *The South African Truth Commission*, p. 187.

forgotten in years to come. At least the history of their stories can now be recorded as part of South Africa's shared memory. That prevents a denial of the past. The TRC addressed the pain and suffering that many had endured. It was, if the commentators analysed in this mini-thesis are right, an exercise that was absolutely necessary. Virtually the only group of South Africans totally negative about the TRC was the ultra right wing of whites. One would say it was a costly exercise but in order for the future to be brighter and better, the individual victims of the liberation struggle had to be put first.

Would South Africa today have been worse off if the Truth and Reconciliation had not taken place? This is pure speculation and falls outside the field of history writing, but is nevertheless an often asked question. The vast majority of commentators on the TRC agree that it was an important and a necessary exercise.<sup>214</sup> The majority of writers analysed in this mini-thesis would probably argue that South Africa have proceeded from a negative to positive position. South Africans have acknowledged their past and have faced up to the truth. That is a strong foothold for a new democracy.

The TRC had many shortcomings but achieved aims of exposing the truth, establishing facts surrounding gross human rights abuses and restoring human dignity. Piet Meiring admits that the Commission was not a perfect one as it consisted of people each with their own history, convictions dreams and limited understanding. It was an act of compromise.<sup>215</sup>

The South African Truth and Reconciliation Commission was a type of middle ground process when compared to the Truth Commission's of Germany and Chile respectively. The fact that it was a last minute process decided in the negotiated process, accounted for many of its shortcomings. Was it a success or a failure? It brought some hidden truths to the surface, it brought about limited reconciliation, it laid the foundations of a shared memory for South Africa's Rainbow Nation. In that regard it was, in spite of all the criticism against it and of its shortcomings, much more than a limited success.

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<sup>214</sup> Du Pisani, K., "Ná die Waarheids- en Versoeningskommissie: uitdagings aan die historikus in 'n demokratiese Suid-Afrika", *Tydskrif vir Geesteswetenskappe*, 47(1), Maart 2007, p 3.

<sup>215</sup> P. Meiring, *Chronicle of the Truth Commission*, p. 378.

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