

# **Dis-placing Race: The South African Truth and Reconciliation Commission (TRC) and Interpretations of Violence**

by

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*[Race and Citizenship in Transition Series](#)*, 2004.

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## **The Race and Citizenship in Transition Series<sup>1</sup>**

**Bronwyn Harris, Nahla Valji, Brandon Hamber and Carnita Ernest**

Race and citizenship are extremely complex concepts. In post-apartheid South Africa, they find expression on many different levels, including identity, conflict, nationalism, history, politics and inter-personal relationships. They occupy a spectrum ranging from everyday practices and interactions, to formal political and macro-economic forces. They also overlap with notions of reconciliation, justice and reparation, and, although they are separate notions with different histories, they overlap with each other. This creates an added dimension of complexity. Both race and citizenship can be (and commonly are) articulated and/or silenced to serve particular interests. Both can also feed into certain forms of violence, including xenophobia and racially motivated hate crime. Any analysis of race and citizenship must therefore acknowledge the complexity of their expression, representation and impact. Such complexity in the South African context must be assessed in relation to the country's apartheid history, as well as the processes of reconciliation best captured by the Truth and Reconciliation Commission (TRC).

Apartheid created *race* as a mechanism for violence. Race, in and of itself, was the social and psychological reality through which repression and violence functioned. Racism was institutionalised, legalised and internalised. South Africans saw the world in 'black' and 'white' terms and violence was commonly used to maintain this status quo. However, during the Mandela era (1994-1999), a new vocabulary emerged to describe the social order. This vocabulary spoke of nationhood, unity, racial harmony and reconciliation. South Africa was described as a 'rainbow nation'. Reference to race entered a sensitive and delicate terrain. This was a positive attempt to give South Africans a new language for speaking about – and to – each other. But, at the same time, it rendered the real, often violent, consequences of race invisible. In the Mandela era, there was little national debate on how race had influenced past human rights violations. There was also little recognition that race continues to shape identity and interactions – violent or not – within the present.

By contrast, the Mbeki era (1999-ongoing) has been characterised by a 'return to race'. This is partly a consequence of different presidential styles and roles – while Mandela had to stress forgiveness and underplay racial issues in order to consolidate a peaceful (and at times precarious) transition, Mbeki, as he stated in his 'two nations speech', has had to deal with economic inequality rooted in past racial practices. Additionally, the 'return to race' has been forced upon the society by violence: through the actions of white extremists like the Boeremag, as well as less political cases of racist hatred. Less violent expressions of/about race have also re-entered popular and political discourse: in 2000, the Human Rights Commission held hearings into racism in the media, and, in 2001, South Africa hosted the [World Conference against Racism, Xenophobia and Related Intolerance](#).

Although race can be read across these two discrete eras - 1994-1999 and 1999-ongoing - it is important not to oversimplify or reduce the differences to how race has been articulated. Despite a general 'return to race' post-1999, there have been numerous contradictions and striking silences on the issue; for example, within the realm of violence and conflict, as well as Mbeki's own discourse (in 1996, he gave his inclusive 'I am an African' speech, which contrasted with his 'two nations' speech in 1999, but at the opening of parliament in 2001, he seemed to discard the two nations analogy in favour of a 'united' South Africa, irrespective of race). Also, while issues of race have partially emerged in the Mbeki era, the notion of reconciliation – particularly racial reconciliation - has become increasingly invisible. The TRC finally completed its work in March 2003. Many have interpreted this as the end of South Africa's reconciliation process. However, incidents of racial prejudice, intolerance and violence, both within South Africa and internationally, suggest that the TRC was just the beginning and not the end of a sorely needed social dialogue about racial reconciliation.

### **The Truth and Reconciliation Commission (TRC)**

South Africa did not 'invent' the truth commission. Since 1974 there have been more than twenty-five truth commissions around the world. But it was the South African Truth and Reconciliation Commission (TRC) that captured the world's attention. This is partly due to international interest in the fight against apartheid. Also, the TRC was the largest and best resourced commission, and it was afforded extensive media coverage, both domestically as well as internationally. This ensured that the world was exposed to the Commission, and the openness of the process meant that the violence of the past could no longer be denied. The South African model also attracted scrutiny because it promised an alternative way of peacefully resolving entrenched difference through the unique 'truth for amnesty'<sup>2</sup> deal upon which it was premised. Consequently, the notion of using a truth commission to deal with political conflict has gained momentum and many countries are now holding their own Commissions.

TRC Chairperson Archbishop Desmond Tutu said that without the compromises made during the negotiations to ensure majority rule in South Africa, the country would have gone up in flames. From this perspective it follows that the agreement by the African National Congress (ANC) to grant amnesty to perpetrators of apartheid violence was a pragmatic choice. Amnesty was the price, albeit a costly one for victims, for saving the innumerable lives that would have been lost if the conflict had continued. However, unlike in most transitional countries to date, amnesty in South Africa was neither blanket nor automatic. Conditions applied to the South African amnesty and the TRC was the vehicle for this process.

The TRC process began in December 1995 and finished in March 2003, when the Commission handed over the final 2 volumes of its 7 volume report. 7 116 people applied for amnesty. Almost 22 000 people came forward and told how they were victimised under apartheid. The TRC made a number of recommendations to the South African government regarding financial and symbolic reparations, issues of justice and ways to address relationships between South Africans. It is these issues that still need to be grappled with and addressed.

## Evaluating the TRC

The public acknowledgement of past violations was perhaps the TRC's greatest success; as the brutal horrors of apartheid found their way, via the media, into the living rooms of every South African. An undeniable historical record has been created. However, apartheid history still remains contested and fraught with racialised interpretations; for example, many white South Africans continue to deny the impact of apartheid and many dismissed the TRC itself as a 'political witch-hunt' (cf. Thiessen, 1996<sup>3</sup>). The role of the TRC - in both writing history and as an historical process itself – demands ongoing scrutiny.

At a narrower, more immediate level, a minority of victims did uncover suppressed truths about the past. In some cases, missing bodies have been located, exhumed and respectfully buried. For others, the confessions of perpetrators have brought answers to previously unsolved political crimes – crimes, which the courts, due to expense and inefficiencies, may never have tried. However, for many, the TRC began a process that it was unable to complete. Many of the victims who went before the TRC, with the hope that their case would be investigated, feel let down and no closer to the truth than before they publicly told of their suffering. Irrespective of the feasibility of investigating every case, victims' high expectations of the TRC have been dashed, and in their eyes, this has undermined its credibility.

Justice also remains a burning issue. Politicians may be able to justify the exchange of formal justice for peace, but it was difficult for victims to watch while the perpetrators received amnesty. Not only were many perpetrators 'let off the hook', victims feel let down and disappointed by the government's response to the TRC. Regarding financial reparations, the Commission recommended that the government should pay those victims identified through the TRC process R3 billion, in annual installments over a 6 year period (this total figure represents 0.001% of the country's annual R300 billion budget, which translates into R136 000 per individual). However, the South African government has only agreed to pay R30 000 per individual, in a once off payment. The Commission also recommended that business and other apartheid beneficiaries should pay a once-off wealth tax and that the country's inherited apartheid debt (which accounts for approximately 20% of the government's annual budget) should be restructured in order to free up money for development and redistribution. Again, the government chose to ignore these recommendations. This has left victims feeling betrayed. It also does not bode well for long-term reconciliation. As CSVr researchers, Polly Dewhirst & Nahla Valji (2003) note,

The 'miracle' of a new SA is hardly sustainable if it is built without restoring the dignity and humanity of the majority of its citizens, nor if it fails to address the economic inequalities which fuel social conflict.<sup>4</sup>

There are also debates about the broader merits of the TRC. At the very least the reconciliation project, with the TRC at the helm, has brought South Africa through the transition period with relative political stability. The humanist approach of Mandela and Tutu brought compassion to a brutalised country. Despite the horrors revealed by the TRC, glimmers of humanity shone through and provided hope for the future.

However for some, despite the merits of the TRC, 'reconciliation' is merely a euphemism

for the compromises made during political negotiations - compromises that ensured continued white control of the economy. From this perspective, reconciliation is meaningless without structural change. A related, more cynical view is that the rapprochement between the old and new regimes was a strategy to consolidate a new black elite under the banner of reconciliation.

Many argue that the TRC missed the bigger picture by defining victims only as those who suffered intentional violence. Because the TRC focused on victims of gross human rights violations, such as torture and murder – it did not include the 'ordinary' victims of apartheid – the millions of South Africans who suffered from land removals, forced displacements, the migrant-labour system, Bantu education etc. As such the TRC did not engage directly with the institutionalised, structured ways in which racist policies affected and victimised people on a daily basis. Those who suffered more broadly from the economic ravages of apartheid and were not victimized directly by political violence were excluded from the TRC. An important question to ask is: what mechanisms do those, excluded from the apartheid state and then from the TRC, have for defining and consolidating a sense of citizenship in the 'new' South Africa?

Similarly, the degree to which the TRC used race as an explanatory variable in its understanding of the abuses it investigated remains questionable. In some cases, 'race' was generally collapsed into 'political motive', as exemplified by the amnesty decisions in the Amy Biehl, Chris Hani and St James' Massacre cases. However, this was done inconsistently and the relationship between race and politics was not clearly defined. Overall, the reconciliation process engaged less with 'black and white' issues than with inconsistent 'political' definitions of perpetrators and victims. This has had the after-effect of divorcing race, and racial identity, from the violence of the past. It similarly keeps race separate from understandings of violence in the present.

A related point is that, as a transitional justice mechanism, the TRC accepted and legitimated certain explanations for the violence of the past. In this way, it has played a key role in influencing the society's moral reactions to violence. This is specifically evident in the area of amnesty. The question needs to be asked, despite the compromises made to set up the TRC, has amnesty undermined South African citizens' sense of morality? Has it contributed to ongoing violence and impunity? Has it impacted upon how different race groups see each other? There have been various evaluations of the TRC, but none have taken into account the ways in which it has explicitly addressed race, morality and citizenship as components of past human rights violations and factors in contemporary social relations. It is precisely these questions that the [\*Race and Citizenship in Transition Series\*](#) has sought to address.

The different perspectives surrounding the TRC demonstrate the complexity of dealing with oppression and violence – and how past events shape the process of reconciliation.

The TRC was not alone in its attempts to build reconciliation in South Africa. A number of other institutions were set up to deal with the legacy of the past. These included for example the Land Claims Court and the Human Rights Commission. Other structures, such as the Independent Complaints Directorate, were set up to monitor ongoing abuses by the police. However the degree to which these institutions, and the TRC can be said to have consolidated reconciliation and effected transformation can, at best, be described as

ongoing but desperately incomplete. There are ongoing police abuses, young people still express feelings of marginalisation, racism and racist incidents continue to take place, and the poor have not substantially benefited from the changes in the country.

### **Levels of Reconciliation**

The process of reconciliation can be said to operate on a number of levels, i.e. the political, community and individual levels.

At the political level, reconciliation has been embodied in the compromises that lead to a political peace. This process can be said to be broadly successful, as it has brought political stability to South Africa.

At the community level, despite some successes by the TRC, reconciliation is largely incomplete, with many of the old racial and political divisions remaining in place. This is evidenced through high levels of residential segregation between black and white South Africans residentially. It is also expressed between different groups divided along political affiliation, such as ANC and IFP supporters, and xenophobic hostility between South Africans and foreigners, particularly those from elsewhere in Africa.

At the individual level, the question is far more complex and is bound to how individuals feel in relation to the process of reconciliation. Many individual victims feel that their needs have not been met by the TRC. At the same time, many of those who benefited from apartheid are still denying their complicity status. This is linked to the many who refuse any responsibility for reparations and redressing the past. There is also an expectation that the next generation will somehow begin with a 'clean slate' (Oakley-Smith<sup>5</sup>). The ongoing impact of a racist and violent past continues to play out through incidents of racist hate crimes and expressions of xenophobia. Hostility towards foreigners, particularly black Africans, commonly results in violence and is spurred on by overly zealous views of nationalism in the 'new' South Africa. In addition, many South Africans are finding themselves questioning their role in the country. This could be linked to the many young people who are leaving the country as they feel there is no future for them in South Africa.

### **A Crisis of Citizenship**

We would like to suggest that there is a 'crisis of citizenship' in South Africa at present, which threatens the genuine reconciliation begun through processes such as the TRC. This crisis manifests itself in ordinary people asking where they belong in the new society. This crisis suggests that there is much work that needs to be done to consolidate the process of reconciliation and a sense of inclusive citizenship. The [\*Race and Citizenship in Transition Series\*](#) is a space for exploring this citizenship crisis, along with the related issues of race, reconciliation, violence and identity in South Africa. Key issues to be examined include:

- **Racially motivated violence.** To what extent does race continue to impact on patterns and trends of violence? How relevant is the concept 'hate crime' to the South African context? What challenges does the criminal justice system face in dealing with racially motivated violence?
- **Race and the TRC.** As a key instrument of transition, how did the TRC engage with the racism of South Africa's past? How has this impacted on the telling of

- history and contemporary understandings of racial relations?
- **Lessons from Guatemala.** There are many parallels between Guatemala and South Africa: historically, both countries were based on racist political systems, which resulted in racialised inequality and conflict. Both countries set up truth commissions to address their pasts and engage with citizenship in the future. Both countries continue to be marred by violence. What lessons can South Africa learn from the Guatemalan transition?
  - **Young people and race.** How do young people conceive of citizenship, identity and racial reconciliation? The views expressed by the younger generation provide a means by which to evaluate the degree to which South African society has, or has not, transformed; as well as the longer-term influences of transitional processes.
  - **Institutional transformation and the legacy of racism.** What recommendations and findings did the TRC make about transformation in the South African Police Services, schools, and efforts to address racism in South African institutions?

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## Introduction

We cannot hope properly to understand the history of the period under review unless we give apartheid and racism their rightful place as the defining features of that period. (TRC Report, Chap. 1, Vol. 1, p.15)

This, one of the opening salvos in the first few pages of the Report of the Truth and Reconciliation Commission (TRC), promises much. Yet apartheid, and specifically questions of race and racism, are strikingly absent from the interrogational framework of the TRC, in both its processes and products.<sup>6</sup> The question must then be asked: *How did a truth commission examining the final thirty four years of apartheid manage to construct an account of the past that did not place race centre stage?* This article will argue that a constellation of ideological contexts and practical possibilities placed boundaries on the interpretive reach, discursive terrain and scope of activities of the TRC, with specific consequences for its engagement with the nexus of race, racism and apartheid. Some of these boundaries were in place prior to the establishment of the TRC, some were the boundaries of the political space in which the TRC acted, while others were the consequence of choices made by the organization itself.

Further, by circumscribing the borders of its mandate to violence directed at the body, and by implicitly casting race/racism and politics as two separate domains, the TRC effectively sidestepped the traumatic issues and trenchant debates around race, racism and the legacy of apartheid. This had an unforeseen price, as in doing so it loosened, perhaps even lost, a

vital connection to the national project of transformation in South Africa - a project increasingly focused on the legacy of racial discrimination.

Nevertheless, race is not entirely absent in the TRC: experiences of race and racism filtered through these boundaries in multiple and contradictory forms and sites. These expressions had different receptions within the TRC, being variously admitted and excluded. Inasmuch as the TRC 'displaced' race in particular terrains, it simultaneously 'placed' it in other sites, largely outside of its purview.

In addition, the TRC as an organization was itself at times the site of sharp racial tensions and internal upheavals around racialised power relations amongst its staff and leadership, largely latent but at times expressed and even publicly commented on. These suppressed or partially admitted manifestations equally form part of accounting for the TRC's engagement with race.

This article will outline the mandate implemented by the TRC and consider briefly how this led to the particular and different orientations to race in specific sites of inquiry in its work: namely the human rights violations statements; the amnesty hearings; the perspectives of political parties; the sector hearings; and its Final Report. Secondly, this article will trace the location of the TRC in the period of political transition in South Africa, and illustrate how certain ideological, historical and political momentums, both local and international, steered the TRC in particular interpretive directions.

### **The TRC and its Mandate**

One of the most sustained, trenchant and much-cited critiques of the TRC has been the specific interpretation it adopted of its mandate and its reading of the legislation that established its existence, namely the [Promotion of National Unity and Reconciliation Act, No. 34 of 1995](#). This particular interpretation functioned to distance race in ideological and practical forms. The Act expressed the mandate of the TRC as follows:

To provide for the investigation and the establishment of as complete a picture as possible of the nature, causes and extent of gross violations of human rights committed during the period from 1 March 1960 to the cut-off date contemplated in the Constitution, within or outside the Republic, emanating from the conflicts of the past ... (Promotion of National Unity and Reconciliation Act, No. 34 of 1995)

The Act further offered the following definition of gross violations of human rights:

Gross violation of human rights means the violation of human rights through  
(a) the killing, abduction, torture or severe ill-treatment of any person ...

The TRC adopted a narrow definition of gross human rights violations, looking at violations that occurred in direct political repression and strife, rather than those incurred through the wider impact of apartheid. Yet the policy of apartheid was itself a 'gross human rights violation' and was declared a crime against humanity by the United Nations.<sup>7</sup> Although the TRC endorsed this position, it confined its gaze to the physical and repressive



dimensions of apartheid rule and did not address the more structural violence of apartheid. This 'condensed suffering to the traces on the body' (Ross, 2003, p.12) and ignored the 'monstrously labyrinthine system which dominated every facet of life in SA' (Posel, 1991, p.1).

The critique of this interpretation, extensively argued by Asmal, Asmal and Roberts (1996), and succinctly expressed by Mahmood Mamdani (1996 and 2000), argued that this narrow focus on violations of the body ignored the implicit wider mandate of the Act which in their view included the wider structural violations of apartheid based upon racial discrimination. As a consequence, the TRC's depiction of the violence of the past was a shrunken and attenuated one, focused on a 'tiny minority' of those who suffered direct physical violations. This truncation confined violence to the body as opposed to social groups. Whereas tens of thousands were affected by violent physical repression, millions endured the machinations of apartheid from birth to death (indeed even beyond, in segregated cemeteries) through the system of racial classification, the pass laws and their associated systems of migrant labour, the creation of far flung artificial homelands, and the loss of land and citizenship. Indeed, Mamdani has described the forced removals of some three and a half million people as 'South Africa's gulag' (Mamdani, 2000, p.180). While perhaps some 25 000 people died between 1960 and 1994 in political violence, millions more were condemned to short brutal lives as victims of racially defined poverty – the 'human lives withered away' (TRC Report, 1998, Vol 1, Chap 4, p.64). These casualties of apartheid, what one may perhaps term 'racist deaths', were, for example, the thousands of dispensable mineworkers crushed in underground mining accidents, or the thousands of children in the homelands dying before the age of five. These were the consequence of racialised poverty and the absence of value placed on black life by the state.

The TRC focused on torture, murder and rape, all outside the law, ignoring everything that was distinctive about apartheid and its machinery of violence. (Mamdani, 2000, p. 181)

The legislated time frame to be examined by the TRC – 1 March 1960 to 31 December 1993<sup>8</sup> - does propose a certain circumscription of focus to physical violence, commencing as it does with the Sharpeville massacre of 21 March 1960. If the entire panoply of apartheid was intended to fall within the purview of the TRC, a 1948 starting date may have been more appropriate.<sup>9</sup> The May 1995 Parliamentary debate on the proposed Bill (Promotion of National Unity and Reconciliation Bill) indicates that the legislators themselves had to some extent foreclosed the issue. Minister of Justice Dullah Omar expressed this directly while introducing the Bill:

The Truth and Reconciliation Commission has in a sense a limited brief. It will not examine all the crimes of apartheid or the history of apartheid, or the sufferings inflicted by apartheid policies in general. Such a history is no doubt necessary, but that is not the function of the commission. (Hansard, 17 May 1995, col. 1344)<sup>10</sup>

The choices of definition and interpretation made both by the legislators and the TRC had particular consequences in placing restrictions on the TRC's capacity to engage with race. Race and racism were de-centered as a critical interrogational framework for the TRC,

along with several other key constitutive elements of the parameters of apartheid, including class, gender and ethnicity.<sup>11</sup> The 'imprint' created by the TRC was of a generic victim tortured or killed, rather than forcibly removed.<sup>12</sup> This imprint was also of a victim historically abstracted from power relations.

Understanding violence in terms of gross violations of human rights flattens the complex social terrain instituted by colonialism, apartheid and various resistances, and eliminates an investigation of the subjects produced by these processes. In effect, then, the Commission's work effaced certain of power's historical dimensions. (Ross, 2003, p.16)

In March 1997, after almost one year of public hearings that placed individual experience of political violence centre stage, a coalition of key South African NGOs and organizations made a submission to the TRC that argued that its enabling statute in fact obligated the inclusion of economic, social and cultural rights within its brief.<sup>13</sup> By drawing upon South African constitutional law and international human rights law, the submission argued that:

The TRC cannot ignore violations of economic, social and cultural rights (e.g. violations that arose out of the enforcement of the pass laws, forced removals, and Bantu education) and still fulfill its mandate under law. ... the TRC should analyse violations of the right to access to housing, freedom of movement, choice of residence, education, health, access to resources, and welfare and social security – all rights that are part of our new Bill of Rights. A historical analysis of the State's deliberate violation of these rights based on race and gender is crucial to the creation of a human rights culture. (NGO Submission, 1997, Executive Summary, available online)

Noting that the legislation did not provide a clear definition of severe ill-treatment, the submission pleaded with the TRC to use the term to embrace this wider scope of abuses. The Coalition acknowledged that the TRC had 'neither the time nor the resources to undertake a thorough and systematic investigation and analysis of all the violations of human rights that occurred under apartheid' (NGO Submission, 1997, Conclusion, available online), but suggested that through incorporation of existing research and submissions, and the careful use of examples in its Report, the link between the apartheid context and the gross human rights violations that followed could and should be made.

The TRC's 1998 Report responded to this issue by explaining that a number of very difficult and contested decisions were taken regarding its mandate.

A deep awareness of this systematic discrimination and dehumanisation made it very difficult for the Commission to concentrate only on those whose rights had been violated through acts of killing, torture, abduction and severe ill treatment.

For example, during the earlier information-gathering phase of the Commission's work, the category that required most attention was that of 'severe ill treatment'. The ordinary meaning of 'severe ill treatment' suggests that all those whose rights had been violated during the conflicts of the past were covered by this definition and fell, therefore, within the mandate of the

Commission. This view was expressed in the submissions of a number of organisations and groups representing, for example, victims of forced removals and Bantu education.

While taking these submissions very seriously, the Commission resolved that its mandate was to give attention to human rights violations committed as specific acts, resulting in severe physical and/or mental injury, in the course of past political conflict. As such, the focus of its work was not on the effects of laws passed by the apartheid government, nor on general policies of that government or of other organisations, however morally offensive these may have been. (TRC Report, Vol. 1, Chap 4, pp. 63 – 64)

In its discussion of its mandate, the TRC's Report agreed that

A strong argument can be made that the violations of human rights caused by 'separate development' - for example, by migrant labour, forced removals, bantustans, Bantu education and so on - had, and continue to have, the most negative possible impact on the lives of the majority of South Africans. The consequences of these violations cannot be measured only in the human lives lost through deaths, detentions, dirty tricks and disappearances, but in the human lives withered away through enforced poverty and other kinds of deprivation.

Hence, the Commission fully recognised that large-scale human rights violations were committed through legislation designed to enforce apartheid, through security legislation designed to criminalise resistance to the state, and through similar legislation passed by governments in the homelands. Its task, however, was limited to examining those 'gross violations of human rights' as defined in the Act. This should not be taken to mean, however, that those 'gross violations of human rights' (killing, torture, abduction and severe ill treatment) were the only very serious human rights violations that occurred. (TRC Report, Vol. 1, Chap. 4, pp. 64 – 65)

The definition of severe ill-treatment, which conceivably could have included a far wider range of violations, retained an uneasy lack of clarity throughout the life of the TRC. As late as February 1997, the Commissioners noted the need for further clarification on the category of severe ill-treatment.<sup>14</sup>

While the focus of this paper is race, there are parallel and even more strenuous points that could be made regarding the cost of this approach in respect of gendered violations. The absence of focus on apartheid's systemic rather than repressive character had grievous consequences for women. As the TRC Report notes in its chapter on women:

The Commission's relative neglect of the effects of the 'ordinary' workings of apartheid has a gender bias, as well as a racial one. A large number of statistics can be produced to substantiate the fact that women were subject to more restrictions and suffered more in economic terms than did men during the apartheid years. The most direct measure of disadvantage is poverty, and there

is a clear link between the distribution of poverty and apartheid policies. Black women, in particular, are disadvantaged, and black women living in former homeland areas remain the most disadvantaged of all. It is also true that this type of abuse affected a far larger number of people, and usually with much longer-term consequences, than the types of violations on which the Commission was mandated to focus its attention.<sup>15</sup> (TRC Report, Vol. 4, Chap. 10, p.288)

## **Race in the Processes and Products of the TRC**

A very broad and extensive accumulation of 'sources and evidence' came before the TRC, including the remaining security records of the state, certain records of the liberation movements, some twenty-two thousand victim statements, several thousand amnesty applications from perpetrators, and submissions by political parties, groups and individuals. These constellations of voices and views of the conflicts of the past were highly diverse and expressed perceptions and representations of 'self' and 'other' that articulated race in very different forms. Six key sites of TRC work, of greater and lesser visibility, will be considered here as moments where these articulations were made visible: the submissions by political parties, the human rights violations statements and testimonies, the amnesty process, the sector hearings, the TRC report and the TRC as an institution itself.

In most instances, political and ideological affiliations loomed far more prominently than race per se. Within the admittedly narrow framework of the evidence gathered by the TRC through victim statements and amnesty applications, political affiliation and 'politically defined cleavages' (Simpson, 2002, p. 220) rather than race emerge as the key pivot of explanation. This is unsurprising given that the TRC excluded violations arising out of the racially structured machinations of apartheid.

### **Perspectives of Political Parties**

Submissions forming part of the process of debate and contestations around the proposed TRC legislation in Parliament as well as submissions to the TRC by political parties indicate significant differences regarding the characterization of the South African conflict, and offer a multiplicity of views on race in historical perspective.<sup>16</sup> Representatives of the former South African Police, for example, suggested a definition of past conflicts that threw the net around race too. They proposed a definition of an 'act associated with a political objective' as one which was

committed in the course of conflicts between divisions in the South African society, *whether based on colour, race, class, belief, language or culture or not*, or between governmental organs or agencies on local, national and international level themselves or between any of them and non-governmental persons or bodies.<sup>17</sup> (Submission K, emphasis added)

One un-attributed document forming part of the submissions proposed that racism should be included as a factor precluding the granting of amnesty, along with personal gain, malice, and ill-will or spite.<sup>18</sup> This proposal did not survive into the final Act.

In their submissions to the TRC, both the National Party (NP) and the Freedom Front (FF), represented by former State President De Klerk and former Chief of the Defence Force General Constand Viljoen respectively, sought to extinguish racism in their accounts of their past actions. Both preferred to describe the past conflicts as clashes between Afrikaner and African nationalism. This depiction of a 'clash of nationalisms' obscured any sense of racialised privilege and power or economic exploitation. For De Klerk, apartheid began as a benevolent and genuine attempt to answer the question:

How would we avoid the chaos that was sweeping much of the rest of Africa, that was depicted in horrific photographs of refugees fleeing from the Congo or Angola, and yet ensure justice and full political rights for Black and Brown and Indian South Africans? How could we defend ourselves against expansionist international Communism and Terrorism and yet make all South Africans free? The solution that we then came up with was 'separate development'. That was the second phase of National Party policy and philosophy. (NP submission, August 1996, available online)

De Klerk was at pains to distinguish the 'new National Party' from the old and even claimed a stake in the struggle against racism:

We dismantled apartheid. We defended South Africa against those who planned to seize power by violent and unconstitutional means, and we played a leading role in the establishment of the New South Africa. Now as supporters of the new National Party we are enthusiastic participants in the non-racial democracy that we helped to create. (NP submission, August 1996, available online)

For Constand Viljoen, representing what he termed the 'ethnic Afrikaner', racial discriminations and conflicts were essentially a mistaken by-product of their bitter struggles against British imperialism.

For decades [Afrikaners] fought a new battle against bitter poverty and cultural suppression. Therefore from the agony and the tumult of the past, from heroic battles and from the disappointments, bitter disappointments the Afrikaner people were actually molded. (FF submission, August 1996, available online)

Arguing that it was a 'mistake to judge all Afrikaners from the perception of perceived racism', Viljoen even argued that modern South Africa was a product of the joint labours of Boer and Black, effacing any notion of a master/servant relationship or the extreme strictures of migrant labour:

We had clashes with [Africans] in the former century when settlements took place, but by and large in this century we have shared with them, above all, the hard work of building this country. In this effort the Afrikaners and the Africans worked together to produce a unique product in Africa, a well developed, sophisticated state of South Africa. We have to recognise that this mistake on the part of the Afrikaner when he took political control after a long struggle together with the other groups precipitated a serious alienation and polarization that has characterised our society in recent years and has brought us into this

urgent need for reconciliation. (FF submission, August 1996, available online)

The Democratic Party (DP) initially did not intend to make a submission to the TRC. When it did so, it positioned itself as protestor within the system, as 'observer and monitor' of the violence of the past, rather than participant or benefactor. The DP described the politics of the National Party as one of Afrikaner domination, later broadened to white domination, 'geared to prevent black citizens from becoming a political majority in South Africa.' (DP submission, August 1996, available online)

Central to promoting white interests, was depriving blacks, coloureds and indians of their basic human rights, including political rights, rights of permanent residence, educational rights, family rights, labour rights, rights of citizenship. Initially the National Party government's policy was described generically as "baasskap", which Prime Minister Strydom once defined as mastery, domination and compulsion. The policy became far more sophisticated as time passed and it was described by a variety of different names, particularly during the premiership of Prime Minister H.F. Verwoerd, who sought to promote apartheid as a philosophy granting freedom and equality within the context of separate development. (DP submission, August 1996, available online)

While sharply etching the racial dimension and consequences of apartheid, the DP's overview also did not engage how these intersected with the interests of capital and racial privilege, in which the DP and its membership and supporters, in their erstwhile political party incarnations, were more deeply implicated.

The ANC submission sought to describe both the colonial and racist character of the state against which it fought, expressed in the typology 'colonialism of a special type'.

For many centuries our country was characterised by a conflict between the forces of white minority domination on the one hand, and the forces of national liberation and democracy on the other. What this speaks to is an unjust cause on one side and a just cause on the other ... . The simultaneous and interdependent deification of the two inherently anti-human concepts of racial superiority and the colonial state as a concentrated expression of the unlimited rights to the use of force of necessity and according to the inherent logic of the system of apartheid produced the gross violations of human rights by the apartheid state which are the subject of part of the work of this Commission ... (ANC submission, August 1996, available online)

While stressing the racist motivations of the apartheid state, the ANC was at pains to point out that racist retaliation did not form the basis of its own 'just and irregular war for national liberation'.

[The ANC] avoided what would have been very easy, namely, attacks on white civilians such as could have been carried out at white schools and white churches, against civilian aircraft, against diplomatic missions and so on. (ANC submission, August 1996, available online)

By contrast, the PAC's submission and the related Azanian People's Liberation Army (APLA) amnesty applicants argued that although the PAC's theoretical position contested notions of race, the organization and its supporters regarded whites as targets for attack.

The PAC, Mr Chairperson, as alluded to earlier opposed both racism and multiracialism. Racism and apartheid preached and practised the concept of *herrenvolkism*. Multiracialism on the other hand compartmentalised Azanians into racial, categories. These racial compartments were then clubbed together in the Congress Alliance and presented as multiracialism. Unlike the white supremacists, Africanists espoused oneness and equality of all human beings and regarded them members of one race, the human race. (PAC, August 1996, available online)

Lungelo Mbandazayo, a lawyer appearing for Pan Africanist Congress (PAC) amnesty applicant Thembinkosi Henge, explained how this was translated into a strategy that targeted white civilians.

It's plain dishonest to say you hate the sjambok, not the person who is wielding it. So [the PAC's] policy was based on that. You can fight and say you are fighting apartheid, the laws, but as long as the people who are passing those laws, you are not shaking them, you will never – they will just change the laws. The best thing is to hit the person ... . Though it may seem racist because of the colour of the skin of the people who were in the ruling class, but it was not specifically the targeted class, but they were targeted because they were the ruling class. (Amnesty Hearing, 06 October 2000, Cape Town)<sup>19</sup>

The TRC, while 'hearing' these historical and interpretive accounts in public, did not particularly reflect or pronounce on these divergent views in its Report.<sup>20</sup> Although there was robust questioning of political parties at the hearings, this tended to center mainly on the policies and strategies that led to physical violence. No single account was 'authorised' or repudiated in its Report with any explicit commentary, although the findings and conclusions made in the Report implicitly disputed the stance of the National Party and Freedom Front.

#### **Human Rights Violations Statements and Testimonies**

TRC Human Rights Violations (HRV) statements were accepted by the TRC only if they fell within the narrow interpretation of its mandate. Statements that dealt with the abuses of 'normal' racist practices were excluded. The HRV statements were thus a key site of displacing the language and practice of racism from the accounts of the past. A TRC statement taker commented:

We rejected many, many cases which came to us simply because they were not falling within the political act of the Commission [or part] of the political ambits. For instance most cases of violations in the rural areas were ... along racial lines. For instance a person comes to you and reports that he [one day] was walking in the street in one of the 'dorpies' [small rural towns] and he was shot by a white man. The problem with it is that there is no political connection

into the violation, because it's a civilian or an individual that just shot someone. So there is no political motive. ... A lot of people couldn't accept the fact that because of what this 'white' person did to them it is not a gross human rights violation ... the racial issue was never addressed in terms of what happens to people because [they were] discriminated against racially. (cited in Buur, 2003, pp. 152 – 153)

The 'protocol' form developed by the TRC to be completed by those wishing to make a statement gave no conceptual or physical space for this. The form directed deponents to address killings, severe ill-treatment, torture or abductions only and requested the 'political context' to be specified.<sup>21</sup> It provided a 'cognitive landscape' (Buur, 2002) in which deponents had to locate themselves. Most HRV statement forms, moreover, were filled in by TRC statement takers who made decisions regarding inclusion or exclusion, and the location and shape of the statement.

These TRC processes therefore delineated the paths down which deponents were expected to travel in their narrative account. Testimonies and statements were not 'biographies' in which deponents could situate the TRC's categories of gross human rights violations within a lifetime of racially shaped abuse. Instead, victims were to pluck out the 'incident' of killing, severe ill-treatment, torture or abduction for isolated presentation. Indeed, a Durban-based psychologist, Judeline Clark, described how a woman who had testified at a public HRV hearing described the experience as being 'only a page out of the whole book of her life'.<sup>22</sup>

Yet TRC HRV statements and testimonies were not entirely devoid of race. While political affiliation was the dominant prism through which the violation was articulated, perceptions of race and racism run through victims' statements in both explicit and implicit forms. Black victims' accounts were often a double account: the sharply denoted literal account of the violation, and a 'connoted' or implicit account made up of indirect testimony about the racially constructed relations of power that determined every aspect of their lives: where they lived and worked, their own births, schooling, family circumstances and absences explicable only by the labour demands of apartheid. These asstance references to the geography, spatiality and chronology of their lives, constrained often to mere context, formed an 'uninterrogated' landscape in which the gross human rights violation stood.

Human Rights Violations public hearings tended to be brusque with deponents who wished to speak about matters that did not directly relate to the gross human rights violation, such as their wider experiences under apartheid.<sup>23</sup> Nevertheless, the public hearings were a space shaped by victim testimony as much as TRC intent, and some deponents vividly described the racism that threaded through the experiences about which they spoke. These public testimonies reflected an amalgamation of multiple commentaries in which a specific incident intersected with a lifetime of wider racial abuse. The testimony of Mrs A Sekhoache, who described being arrested and beaten in 1963 in Pretoria while a school student, illustrates this:

When we approached the Paul Kruger statue, we were attracted by bees. Whilst we were standing there and watching the swarm of bees, we could not see that there were policemen who were standing around there ... . We were laughing heartily and we were watching the



swarm of bees as they were flying about. The two policemen emerged and as they emerged they did not give us a chance. They talked to us in Afrikaans. They said "what are you laughing at, Kaffirs". We were dressed in black and white uniform at that time. We were scared because at those times it was a fearsome period because the white children would beat us up every day. They took us, they were dressed in a khaki uniform. They had long rifles. My school uniform was torn apart. They beat us, they assaulted us. I was so scared, I was frightened. I did not feel that I was walking on the ground. The one was holding Maria and the other one was holding me. We were taken to a cell that I cannot remember even today, but we found ourselves in a prison ... . At that time I heard a bunch of keys opening doors ... . Then somebody finally opened our [prison cell] door. That person asked us why did you not eat? We kept quiet. He said "Kaffirs, I am going to cut your tails off". He took this dish and he took it away. It was the first day. (HRV hearing, 12 November 1996, Krugersdorp)

There were often indicators of racism in deponents' testimonies: the indifference of the policeman at the police station responding to their inquiry about a missing child, the inherent dismissal of the magistrate conducting the inquest entirely in Afrikaans. Even when not expressly articulated, victims showed a keen perception that the violation they had experienced was structured and permitted by racism - even among the cases of inter-civilian violence and killings, in that the state would never have permitted such conditions of violence and vulnerability to prevail in white suburbs.

This perception of racism was sharply expressed around the lack of value of black life, even in death, through the cavalier treatment of black corpses. Many deponents spoke to this dimension.

**MR RADEBE:** The people who worsened the situation were the [Police's] Stability Unit. These are the people who turned the situation for the worse, especially the whites. I am not trying to be a racist here, they seemed to enjoy it, ... for example if I were on my way to the head office, I would find corpses along the way and they didn't mind just pushing the corpse with their feet and laugh as if nothing was wrong. They did not seem to care about black people ... (Section 29 hearing of Mr O. Radebe, 29 May 1998, Johannesburg)

Eunice Thembiso Miya, the mother of one of the 'Guguletu Seven' (seven young activists shot dead in a set-up by police in Cape Town on 7 March 1986), expressed this through an animal analogy:

What makes me to cry now is that these policemen they were treating people like animals, that's what makes me cry right now. But even a dog, you don't kill it like that. You even think that the owner of this dog loves it, even an ant, a small ant you think, you have feelings even for an ant. But now our own children, they were not even taken as ants. If I say they are treated like dogs are, that's not how it happened, I am actually honouring them. They were treated like ants. (HRV hearing, 23 April 1996, Heideveld, Cape Town)

Similarly, Louisa Paulsen, mother of twelve year old Lionel Paulsen shot dead by police in Cape Town in August 1985:

Eventually we reached the police station. Having arrived there they chased us away like dogs and said go and find your son's body in the morgue. My husband tried to negotiate with them, but they wanted to arrest him. But then some friend who was with us had to calm him down. The next day we returned again and then they took us to the Commissioner of Police. He was a white man on the second floor and he said please come again on Monday. We don't have time for you now. That was dark days, we didn't not know what to do, we were scared. (HRV hearing, 26 November 1996, Cape Town)

Margaret Madlana testified at the Alexandra hearing:

We were taken as dogs, baboons and all such things. These dogs and baboons which work for them, which bath their children, cook for their children, however, they are still content to kill them. (HRV hearing, 29 October 1996, Alexandra)

Bongeni Majola testified about the death of his wife in the Brandville massacre of 4 December 1991 in KwaZulu Natal:

It was not easy for me to submit a statement because I learnt my lesson at first when Mr du Toit told us that there were some cattle that had been slaughtered, and when we went to the mortuary we realised that he was referring to the people. ... They were referring to our loved ones as dead cows which had been slaughtered earlier on, so I did not want to report the matter to the police. (HRV hearing, 28 May 1997, Mooi River)

Several black victims described how the violation affected their attitude to whites:

**Mr Smith:** How was he affected by this?

**Ms Mhlawuli:** We used to go to town with my mother or just go out, but my brother, immediately he saw the policeman or a white person, or he saw whoever was non-black, he would say, "Here are these dogs who killed my father". (HRV hearing, 16 April 1996, East London)

**Mr Juqu:** When I got to the police station, I was told that my

son is in the mortuary ... I saw him. Actually, he was lying on his stomach. His whole back was full of bullet holes. This policeman was a white man. I don't even know his name. I didn't even want to know his name because I was already hateful towards him. ... If I had anything in front - in front of me or anything - any, any stick or any, any arm at all I will just throw it at him because my son was just lying there dead ... [His clothes] looked like [they were] eaten by mice, and it was full of blood. There were many, many bullets. He had blood coming out of his nose. He was - he was just shot at the back by very many, many bullets.

**Commissioner Ntsebeza:** Were you called in to any court? Maybe in Wynberg?  
**Mr Juqu:** Yes sir, I was called at Wynberg ... They asked me, is this your son? I said, yes he is. He said, ja he is dead. So I said, so what should I do? He said:

Oh! We are very sorry. So, I said, what are you sorry about? At that time I was already confused but I told myself no, let me just stand here and listen and this. [The] magistrate said, okay, there is nothing we can do. So I just turned around and I left. I didn't give a damn what he was thinking about me, and I simply left. (HRV hearing, 23 April 1996, Heideveld, Cape Town)

### **The Amnesty process**

The amnesty process largely excluded racism as a motive for committing gross human rights violations. The Amnesty Committee could only accept acts that took place with a political objective under orders of a known political organization.<sup>24</sup> This, as Richard Wilson has noted, acted to separate race and politics into two separate domains – the one private and the other public, the one illegitimate, the other legitimate (Wilson, 2001, p.89). This 'disarticulation' stood in sharp contrast to other TRC processes where racism was acknowledged as profoundly political, primarily the 'sector hearings', and alongside notions of reconciliation, which was usually articulated as being required between white and black South Africans.

The white right wing and the Pan Africanist Congress (PAC) amnesty applicants faced particular burdens in articulating their political motivation due to the centrality of race in their 'strategies and tactics'. For the legislation reflected a particular interpretive stance: namely, that racist motivation could not be political, and that political action took place only within the confines of a political organization. This highly centralized notion of what constituted legitimate political action closely reflected the organizational and non-racial emphasis of the ANC. This posed problems too for those civilians whose linkages to organized formations were weak, if they existed at all. Civilians could clearly be mobilized by the rhetoric and slogans of political organizations, even if they may not have been formal members.

As Graeme Simpson has pointed out:

Perhaps the most important contradiction that played itself out in the findings of the Amnesty Committees concerned the question of race or racism as a political motive for gross violations of human rights. In some instances, racial motivation was deemed to be 'political' or held in the name of a known political organization, while in others it was not, with the result that some were granted amnesty for such actions whereas others were denied it. The issue here is not whether the individual findings were 'fair' or not, but rather to point out that by 'privileging' acts of political violence, the ironic effect was to denigrate and mask such factors such as race, class or gender as relevant and self-explanatory categories in understanding the dominant patterns and experiences of gross violence under apartheid. (Simpson, 2002, pp. 244 – 245)

Not only did this privilege acts of political violence, but it gave sole legitimacy to organization, as if political action could not have taken place outside of an organization. This primacy given to organization stunted the possibility of individual mobilization. Here the chairperson of an Amnesty Committee panel grapples with the issue in a particular amnesty hearing in which racism played a role:

CHAIRPERSON: That's indeed the problem, Madam. To comply with the requirements of the Act, he has to attach his case to some or other publicly known organization and if you say that he decided on his own and it has absolutely nothing to do with the organisation, he did not have an instruction, then you have to convince us that his application indeed falls within the ambit of the Act and while I am on this point, earlier I asked you the combination of aspects that have nothing to do with politics, the racism of this attack, ... [is] quite clear from the utterance of the applicant to Duvenhage, he does not refer to his political opponents here, he refers here in a racist manner, to black persons. He does not refer to politics, the racism in that sentence is tremendous. (Amnesty hearing, 2 August 2000, Johannesburg)<sup>25</sup>

In the following amnesty decision, where amnesty was refused to members of a 'mob' who attacked, mutilated and killed four white people in Mashongoville, Odendaalsrust, in September 1990, the amnesty committee expresses this highly formalized interpretation of political motivation and activity, as if mob violence could not be political.

It is quite evident that the applicant committed the offences for which he has applied for amnesty in an indiscriminate manner against private individuals. This was a clear case of mob violence in which the applicant participated. There was no suggestion of prior common purpose on the part of the participants. We accordingly cannot accept the evidence of the applicant when questioned, that he participated in the attack in order to kill apartheid. There had been no prior discussion or agreement amongst the participants to achieve any political objective. Furthermore, the nature of the attack was such that there was no proportionality between it and the supposed political objective, namely, sending a message to the Government that apartheid be abolished. The Committee accordingly finds that the offences were not acts associated with a political objective and his application is accordingly refused. (Amnesty decision AC/1997/007 and AC/1997/027)<sup>26</sup>

As a consequence, the amnesty process acted to silence race from the accounts of perpetrators and organizations, driving it underground into other forms of expression and language. Few security force amnesty applicants would state that their racist views and environment made it simply easier to kill and torture blacks. Rather, they framed their actions in the organizational imperatives of crushing the ANC or communism, and the language used is that of combating terrorism and the defence of a Christian as opposed to white way of life. Racism became a dirty and illegitimate explanation or excuse (this continues to be the case today. cf. [Harris \(2004\)](#) for a discussion about how racist hate crime is framed and understood in post-apartheid South Africa).

Amnesty applicants accordingly denied having any racist inclinations, while cheerfully admitting ghastly murders. This denoted an understanding of racism as being a personal belief rather than a structure of power relations and exploitation. Thus De Wet Johan Strydom, a member of the Afrikaner Weerstandsbeweging (AWB, meaning the Afrikaner Resistance Movement) who was involved in setting off a series of explosive attacks prior to the April 1994 elections, resulting in at least one death, denied being racist:

**MR SIBANYONI:** In other words you were not racist in your activities?

**MR STRYDOM:** No, not at all. Since I can remember I've been working with all races in South Africa and I also have good friends who are from other races. I'm not a racist. (Amnesty hearing, 19 November 1998, Welkom)<sup>27</sup>

Dr A.J. Goosen, one of the scientists involved in the South African Defence Force's chemical and biological warfare program which included efforts to research, for example, covert sterilization of black people, also denied being a racist. Dr Goosen did not apply for amnesty.

**DR GOOSEN:** You ask me, do I think I am a racist? No, of course not. I am not a racist. I have many black friends. I grew up on the farm, I played with the black people, everything. It wasn't a thing which was directed against hating blacks or whatever. But that was the environment, that was the climate that was created around us by the propaganda of the politicians and everyone of the day. And this is one thing which I, as a scientist, feel very strongly about, and it grieves me. (Special Hearing in the Chemical Biological Warfare programme, 11 June 1998, Cape Town)

Frank Sandy Bennetts, a policeman from Durban who applied for amnesty for a range of offences including torture and a killing, gamely tried to explain the blurring of race and politics in the security forces during his amnesty hearing. Mr Bennetts, who was serving a prison sentence, was denied amnesty.<sup>28</sup> Yet his account resonated powerfully with the formative background experiences of many state security force members.

**MR BENNETTS:** I am talking about us as young members in the Police Force, Sir. Yes, your blacks were referred to as "kaffirs", often enough that ... it became acceptable to me personally, I speak for myself here, that the entire attitude of us as young policemen was influenced by the senior members in the way that this was said to us, in the way that it was spoken to us, in the way when you were driving in a location as a youngster, originally in the back of the vehicle, I am going back to like the 1982 period with the old Mobile Unit, sitting at the back of the vehicle and the guys, the senior guys and the older guys sitting with you, talking about "kom ons gaan uit en ons gaan skiet nou die kaffirs" [let us go out and shoot the kaffirs], and all this sort of thing. Yes, it did, it had an effect on me. It certainly did, Sir. That is what I mean by indoctrination and education.

**MR MALAN:** ... What you are telling me now, seems to be saying to me that we were told to be racist and shoot blacks? That it was nothing about security or an onslaught, it is simply being racist?

**MR BENNETTS:** Yes Sir. You are right, yes Sir.

**MR MALAN:** So what has that to do with the political background?

**MR BENNETTS:** The opposition were the blacks, basically. They were the kaffirs who then became the UDF and so forth. (Amnesty hearing, 19 June 2000, Pinetown)

Members of the white right wing, particularly the AWB, sought to dispute the racist implications of their attacks, and their efforts in this regard leaned to the absurd. Phillipus

'Phil' Kloppers and Abraham Christoffel Fourie, both AWB members, exemplified this. Kloppers was part of the 'Radora Crossing' incident, in which a fake roadblock was set up and black motorists were flagged down and executed in December 1993.<sup>29</sup> Fourie was involved in several bomb attacks prior to the 1994 elections that left several people dead.<sup>30</sup>

**MR KLOPPERS:** No, it's not the policy of the AWB to be racist but to be pure. (Amnesty hearing, 24 April 1998, Johannesburg)

**MS CAMBANIS:** If Mr Koekemoer said that the purpose was acts of terror against Black people, is that correct? The purpose of the bombing?

**MR FOURIE:** Mr Chairperson I have no knowledge of acts of terror against Black people. This was not, according to me - I have never been a racist and I have got no idea of racist acts of terror or that something like that existed. (Amnesty hearing, 18 June 1998, Johannesburg)

In the case of two PAC supporters, Sithembiso Rodney Tembe and Zamokuhle Gregory Sithole, who attacked several white people at the Durban beachfront in October 1990 leaving one dead, the Chairperson of the Amnesty Committee struggled to fit the case into the appropriate amnesty provisions. The two applicants were granted amnesty.<sup>31</sup>

**CHAIRPERSON:** And in this respect, would I be correct in saying that this was not a racial attack, in the sense of a racist attack but he attacked the whites because he saw all whites as symbols of the then governing regime?

**MS DE KLERK:** That's correct.

**CHAIRPERSON:** And in that sense it wasn't purely a racist attack, but an attack associated with a political objective and political background.

**MS DE KLERK:** That is correct. He even went as far as saying that he didn't distinguish between apartheid and white people and the National Government of the time, he saw them all as one. So as part of the objective to disrupt the government of the day, the retaliation on white people. (Amnesty hearing, 29 March 2000, Pinetown)

Although the PAC objected to the fact that the Norgaard Principles could be interpreted to exclude offences motivated purely by the fact that the targets of those offences were of a particular racial group, the Amnesty Committee's decisions showed those fears to have been largely unfounded.<sup>32</sup> Ultimately, amnesty was granted to most right wing and PAC amnesty applicants whose actions involved racist dimensions as long as they formed part of a known recognized political movement with an articulated political strategy.

### **Sector hearings**

The TRC held a limited number of hearings into the wider culpability of other social sectors, namely the judiciary, the media, the faith community, business and the health sector. These were however no more than brief presentations over several days which later formed the basis for several chapters in the 1998 Report. The sector hearings constituted the TRC's only organized engagement with broader sites of apartheid abuse.<sup>33</sup> They were also the place in the TRC where the questions of race and racism were most overtly considered and debated – where race was 'admitted' into official TRC regard. In these

hearings, race was key to the recounted experiences and debates. Thus, for example, the Media hearing heard evidence concerning racist practices towards black journalists in newsrooms across the country as well as hearing accounts of state repression towards journalists. In this, these hearings stood in awkward discontinuity with the amnesty hearings, where, as indicated above, racism was excluded as a legitimate political objective.

The TRC Report described these hearings as follows:

During the second half of the Commission's life (from approximately the middle of 1997), the Commission shifted its focus from the stories of individual victims to an attempt to understand the individual and institutional motives and perspectives which gave rise to the gross violations of human rights under examination. It enquired into the contexts and causes of these violations and attempted to establish the political and moral accountability of individuals, organisations and institutions. The goal was to provide the grounds for making recommendations to prevent future human rights violations. Features of this phase were public submissions by, and questioning of, political parties, and a range of institutional, sectoral and special hearings that focused on the health and business sectors, the legal system, the media and faith communities, prisons, women, children and youth, biological and chemical warfare and compulsory national service. (TRC Report, Vol. 1, Chap. 4, p. 58)

TRC Deputy Chairperson Alex Boraine similarly explained these hearings as an exploration into the wider realms of apartheid, where race was explicitly addressed:

In addition to the political party hearings, the TRC held hearings investigating the role of other institutions. There were a number of reasons for this. It is true that we needed to see the submissions of individuals in a much broader and wider context, but it is even more true that apartheid was all-pervasive and affected every area of life, and many institutions in the country had participated one way or another in the implementation of the policy. It was with this in mind, and in the context of apartheid's legacy, that these hearings were organized. It would be impossible to assess and to understand the full implication of apartheid without an appreciation of the extent to which the tentacles of an aggressive racial policy reached into every area of life. (Boraine, 2000, pp. 171 - 172)

Yet, although often cited as an example of the TRC's attempts to examine the wider spectrum of apartheid, the sector hearings were largely focused on the issue of how these institutions were, in various ways, *complicit* with apartheid.<sup>34</sup> In other words, the sector hearings did not constitute a systematic attempt to interrogate the terrain of structural violence of apartheid. Such an attempt would have necessitated hearings into the cornerstones of apartheid policy including forced removals, the pass laws, the laws forbidding social and sexual contact between races, the allocations of racial identity, the creation of the homelands (a dimension particularly ignored by the TRC) and so on. These hearings could not be termed a systematic or rigorous critique of apartheid but rather constituted an effort by the TRC to throw the net of culpability a little wider in the face of its critics.

Although an entire volume of the TRC Report – Volume Four - is dedicated to delineating

these hearings, the volume stands quite disconnected from the rest of the Report with few points of intersection. It does not provide an indictment of the structural violence of apartheid.

### **The TRC Report**

The Report equally reflects the TRC's contradictory impulses towards the question of race, and navigates uneasily within the confines of its interpretation of its mandate and a consciousness of the historical legacy of racism. In addition, its two chief axes - 'truth' and 'reconciliation' - are built upon different discourses: 'truth' being articulated chiefly in terms of political affiliation, and 'reconciliation' in terms of race. Although not treated as mutually exclusive in the Report, the two have a somewhat uncertain and ill-defined overlap.

In his Foreword to the TRC Report, TRC Chairperson Archbishop Tutu places racial unity between black and white South Africans at the heart of the TRC project, echoing the sense that reconciliation in South Africa is primarily articulated as being necessary between different races. The following extracts from his Foreword in Volume 1, Chapter 1 demonstrate this orientation:

To lift up racism and apartheid is not to gloat over or to humiliate the Afrikaner or the white community. It is to try to speak the truth in love. It is to know the real extent of the sickness that has afflicted our beloved motherland so long and, in making the right diagnosis, prescribe the correct medicine. (pp. 16 – 17)

I want to make a heartfelt plea to my white fellow South Africans. On the whole we have been exhilarated by the magnanimity of those who should by rights be consumed by bitterness and a lust for revenge; who instead have time after time shown an astonishing magnanimity and willingness to forgive. It is not easy to forgive, but we have seen it happen. And some of those who have done so are white victims. Nevertheless, the bulk of victims have been black and I have been saddened by what has appeared to be a mean-spiritedness in some of the leadership in the white community ... (p. 18)

Ours is a remarkable country. Let us celebrate our diversity, our differences. God wants us as we are. South Africa wants and needs the Afrikaner, the English, the coloured, the Indian, the black. We are sisters and brothers in one family - God's family, the human family ... . My appeal is ultimately directed to us all, black and white together, to close the chapter on our past and to strive together for this beautiful and blessed land as the rainbow people of God. (pp. 22 – 23)

On the other hand, one of the final chapters of the 1998 Report, namely Volume 5 where the TRC's main findings of responsibility for 'the conflicts of the past' are listed, the orientation is primarily that of political affiliation. The findings are structured around political organizations and organizational responsibility, as well as a handful of findings concerning individuals, and findings that cover the 'sector hearings' held by the TRC. Yet this chapter also seeks to keep a space open for the legacy of apartheid and racism. Thus, the 'lead finding' that the South African state was the primary perpetrator of gross violations of human rights violations, situated the gross violations perpetrated by the state and its organs



directly in the context of racism as follows:

In the application of the policy of apartheid, the state in the period 1960-90 sought to protect the power and privilege of a racial minority. Racism therefore constituted the motivating core of the South African political order, an attitude largely endorsed by the investment and other policies of South Africa's major trading partners in this period. A consequence of this racism was that white citizens in general adopted a dehumanising position towards black citizens, to the point where the ruling order of the state ceased to regard them as fellow citizens and largely labelled them as 'the enemy'. This created a climate in which gross atrocities committed against them were seen as legitimate. (TRC Report, Vol 5, Chap 6, p. 222)

There are a handful of sites scattered in the report where 'grand apartheid' or race/racism is cited or summoned as an explanatory device, a context or 'backdrop'. In the main, they are in Volume 1, Chapter 2 (*Historical Context*), and Volume 2, Chapter 1 (*National Overview*).<sup>35</sup> The TRC originally intended to include a detailed historical chapter on the period prior to its mandate period, but the draft that was developed was not ultimately used in the Report.<sup>36</sup> The chapter addressing *Motives and Perspectives of Perpetrators* (Volume 5, Chapter 7) also situates perpetrators in the legacy of apartheid and its racial concerns. In both the TRC's Recommendations chapter and its chapter examining Reconciliation, race is a much sharper focus and axis of discussion. Many of the Recommendations speak to the legacy of racial inequality and make proposals accordingly. The Reconciliation chapter in Volume 5 centers largely around questions of race – reconciliation is pitched primarily around a black-white axis of difference, although the chapter also addresses intra-community reconciliation and other sites of past conflict. Volume 4, which surveys the sector hearings held by the TRC, offers the most sustained engagement with the impact of apartheid and racism.

These rather scattered inclusions do not develop a comprehensive argument or picture. In particular, Volumes Two and Three, which address gross human rights violations by perpetrator groupings and region respectively, barely intersect with these concerns. These volumes focus overwhelmingly on political affiliation, which is the key organizing principle of the chapters within a broad chronological framework.

Cumulatively, the Report largely avoided developing a 'big picture' of the period 1960 to 1994 or using the historical conventional interpretive frameworks of apartheid historiography. It confined its attention to the perpetration and experience of gross human rights violations. It asked the question: 'who was responsible?' as opposed to 'what was responsible?' Race was a casualty of this approach, as was an examination of the nexus between capitalism and apartheid, its gendered relations of power and permutations of ethnicity.

#### **Race and Racism within the TRC**

While sustaining a devoted position within the inherited mantras of non-racialism, the TRC itself was at various moments severely stressed by internal conflicts amongst staff and Commissioners around questions of race, racial stereotypes, and racialised relations of

power, control and knowledge. It is worth noting, however, that gendered power relations that led to conflicts within the TRC did not receive the same public attention, although they were also present. However, neither forms of conflict were unique to the TRC and many 'institutions of transition' faced the same stresses and ruptures, both then and indeed now, although no doubt these were all the more fraught within the TRC due to the nature of its work.<sup>37</sup>

Some of these racial tensions and conflicts have been described in former TRC investigator Zenzile Khoisan's book *Jakaranda Time* (Khoisan, 2001), who argued that a locus or bloc of white power controlled the activities and flow of information within the TRC. The crisis that unfolded regarding allegations against Commissioner Dumisa Ntsebeza is a key illustration of his argument.<sup>38</sup> Commissioner Ntsebeza, who served as the head of the TRC's Investigation Unit, came under suspicion of involvement in an APLA armed attack on civilians in 1993 after apparent 'evidence' of this was found in an old police file by a white TRC investigator. This 'evidence' was ultimately totally discredited as an old set-up dating from 1993 by former apartheid policemen and Ntsebeza was completely cleared by a commission of inquiry.<sup>39</sup> The saga, which lasted a few months, generated accusations of racialised patterns of loyalty and suspicion that severely affected TRC staff.

Khoisan's interpretations ascribe a blanket unity amongst all whites at the TRC – despite the fact that some of the key players in this apparent bloc loathed each other and indeed never spoke to each other. Similarly, he downplays the fact that a great deal of the conflicts and traumas emerged through staff clashes with the TRC's black CEO, regarded as autocratic by many staff. Instances of conflicts between the Coloured and African staff members are similarly not mentioned. The dimensions of power relations and the axes of conflicts within the TRC were not always along the simple black-white dichotomy he describes.

Nevertheless, Khoisan draws attention to the manner in which research and authorship within the TRC continued to mirror the white domination of academic production that still prevailed in the country at large, and how the dominant adoption of the discourse of non-racialism obscured how whites were able to continue their 'historically normal' trajectory of power and control within the TRC.

### **Situating Race and the TRC**

The circumscriptions of mandate and the individualized model of bodily harm adopted by the TRC did not, however, arise solely from its own deliberations. A host of ideological, historical and political orientations arising during the democratic transition within South Africa as well as powerful impulses from the international terrain acted to place it decisively on this path. These mapped out a path of intention and prescribed certain interpretations of violence that were ultimately embraced by the TRC.

### **Interpretations of Race in the South African Past**

In the first place, it must be noted that race has not had a stable place in interpretations of the apartheid past. It has been variously deployed and suppressed as a frame for social, economic and political analysis by the state and the liberation movements, by academic

analysts and activists. Indeed, the history of South African historiography in the 1970s and 1980s was dominated by this precise debate: the intersections of race and class (and, later, to a lesser extent, gender) in the apartheid constellation.<sup>40</sup> Historians producing what was then labeled conservative, liberal or radical historiography construed South African society in various terms, all of which ascribed specific and differing positionalities and functionalities to race in the fabric of South African society. Even within what may loosely be termed 'radical history', South Africa has been described in terms ranging from, for example, racial capitalism, colonial capitalism, or even 'colonialism of a special type'.

While this historiographical debate included some consideration on the origins and nature of racism, it was mainly centered around the question of whether racial apartheid served as a contradiction or complement to capitalism: hindrance or help? Was racial discrimination a refined form of class domination, through its creation of a cheap labour force? Trapped largely in this 'either/or' partisanship regarding the functionality of race to capitalism, the debate ironically did not engage with the question of race and racism itself. The editorial (entitled 'Debating "race" in South African scholarship') of a special issue on race in the journal *Transformation* noted:

Perhaps the most remarkable theoretical feature of this debate was the failure to engage the question of what 'race' actually was, either in general theoretical terms or as an historical reality under apartheid. On the Marxist side, the concept of race was never explicitly defined. But, tacitly, it became the signifier of all that was 'not class'. (Posel, Hyslop and Nieftagodien, 2001, p. vii)

Race, although powerfully present in analytical texts as an assumed backdrop, did not receive direct analysis itself (and as such, the impact of race on identity was left unexplored). The unspoken omniscience of race, being everywhere visible but nowhere analysed, operated as a given determination in analytical studies. Ran Greenstein has noted 'there must be very few places in the academic community which have actively neglected the study of race to the same extent as in South Africa' (Greenstein, cited in Posel, Hyslop and Nieftagodien, 2001, p.i).

The racial politics of academic and intellectual production in South Africa doubtlessly played a role in this somewhat askance engagement with race. The *Transformation* editorial asked:

Why, in a society that has been so thoroughly steeped in the effects of race, has the issue been so frequently unspoken among scholars writing about apartheid itself? To understand this academic 'repression' of race ... theoretical and historiographical debates about race in apartheid should be located in the politics of production during the apartheid era. (Posel, Hyslop and Nieftagodien, 2001, p. ii)

The authors argue that the academic marginalisation or 'suppressed epistemology' of race reflected the dominant position of whites within academic production in South Africa, who were uneasy engaging with a discourse and materiality in which they themselves were profoundly implicated (Evans, 1990). This discomfort had a convenient intersection with the emphasis on non-racialism expressed by the dominant liberation movement and its

rejection of racism and racial discourses associated with the state.

Within the political movements that sought to oppose apartheid, approaches to race were equally sites of debate, dispute and division. While the discourse of non-racialism associated with the ANC had, by the 1980s, acquired a form of hegemonic domination within South Africa and the international terrain as the chief language of liberation, this masked significant alternative perspectives that emerged from the late 1950s into the 1960s and 1970s. The Pan Africanist Congress (PAC) breakaway from the ANC, the formation of the South African Students Organisation (SASO), Azanian People's Organisation (Azapo) and other 'Black Consciousness' organizations placed counter-discourses, historical analyses and strategies regarding race in sharp contradistinction to the prevailing ANC stance. These ideological disputes at times took violent form within South Africa, particularly from 1985, when a number of townships were the site of bloody clashes between opposing ideologically aligned groups. Further, the precise notions, evolutions and practices of non-racialism within the ANC have themselves recently come under more critical scrutiny, disturbing the stability of this image.<sup>41</sup>

In sum, 'race' has been a highly contested analytical and political category and the TRC did not inherit a 'fixed' body of knowledge or approaches to this question. The TRC has been taken to task for its failure to engage with these debates. In fact, the silence on race within the TRC forms part of a wider avoidance of theorizing the conflicts of the past within its work and writing.

For some, this absence of explicit engagement with either theory or historical debate is a severe weakness. Within South Africa, the TRC Report was criticized by historians for its lack of attention to issues of 'social causation' and was described as a 'primarily descriptive rendition of the past, uneven in its discernment of detail and indifferent to the complexities of social causation' (Posel, 2002, p.148). Further, the Report lacked 'any explicit engagement with the historiography of apartheid, and therefore with the contestedness of its history' (Posel, 2002, p. 164).

Not only historians registered their theoretical dissatisfaction: other South African analysts complained that important social concepts were not interrogated. Gender analysts pointed to the absence of engagement with patriarchy:

The failure to adopt a gendered analytical framework means that a seemingly neutral approach has resulted in the exclusion of women's experiences ... [and that] the historical role of patriarchy in shaping the society we have today is almost entirely left out. (Goldblatt and Meintjies, 1999: np)

Race and racism, however, remained the central site of silence:

The Report tends to treat racism as an answer not a question. ... why racism has shaped the South African social order is another of the big silences in the TRC's encounter with the past. Racism simply exists; it is 'part of the warp and woof of South African society', the motor of its history. Overall, there is little sense of the interconnectedness of racism and other divides in the society. (Posel, 2002, p.165)

Yet it is questionable whether it was appropriate or necessary for the TRC to 'weigh in' on longstanding historiographical debates or even 'make findings' on debates that continue to unfold. This distance from analytical debate has been common to most truth commissions, which, in general terms, have refrained from engaging in far-reaching historical analysis in their work and Reports. The Guatemala Report may be the exception in this regard, with the bulk of the first volume of its 12 volume report dedicated to a historical overview. This covers for example, the systematic economic exclusion, racism, and the subordination and the exclusion of the indigenous people (cf, Valji (2004) for an overview of the Guatemala truth commission process in relation to the key concepts of race and prejudice). Are truth commission reports really an appropriate body to pronounce on longstanding theoretical debates, or adjudicate the precise intersections of class, race, gender and ethnicity in the South African past? Perhaps, at most, all the Report could have done was to indicate and denote the contested nature of these concepts in South African debates.

There is also a strenuous lobby for a narrow empirical approach, often argued, unsurprisingly, by lawyers. US Law professor Henry Steiner articulated this stance:

Were [truth commissions] characteristically to engage in social analysis, by identifying structural phenomena underlying violations, and by proposing deep changes in a society's socio-economic organization, they [would] risk being viewed as but another voice in a world of disputed opinions and theories about justice, development, whatever. Their reports might lose their distinctiveness and a sense of objectivity by being absorbed into the broad play of political ideas and historical debate. (Steiner, 1997, p. 16)

### **Race in the Period of Political Transition**

The TRC is often described as being the product of a political compromise during the period of negotiations on the question of amnesty (Bundy, 2000). But equally, it was also a product of a particular historical moment, being legislated, installed and 'operationalised' as one of the first initiatives of the Government of National Unity under the Mandela Presidency.<sup>42</sup> Its 'constitutive era' was one that stressed social and racial cohesion after the recent bitter bloody violence of the 1990s and the sustained fragmentations of centuries of segregation, exploitation and apartheid.

While it is trite to suggest that the Mandela presidency was purely characterized by an emphasis on racial unity (and thus the implied and implicit underplay of the economic legacies of racism and apartheid),<sup>43</sup> the TRC did form part of the constellation of inaugural initiatives of that era and was deeply implicated in its directions and directives. This undoubtedly played some role in the interpretive orientations and choices of the TRC. Further, the appointment of Archbishop Desmond Tutu, the very progenitor of the term 'rainbow nation', as the Chairperson of the TRC authorized and legitimated a discursive and ideological continuity between the concerns of the state and this newly created body.

Indeed, one domestic strand of academic criticism has argued that the TRC was precisely an instrument of national unity and a project of national '(re)construction' that involved silencing of conflict and concealment of the continuities of injustice from past to present, in order to 'imagine' the new nation. In this view, the TRC was an institutional expression of a

'closed master narrative of national reconciliation'. This necessarily dictated that race and racism had to be excluded from its interrogational framework and the new values of constitutionalism and citizenship of the new South Africa inscribed accordingly. This 'whitewashed' or erased race out of the landscape of violence.<sup>44</sup>

An extension of this critique is that the TRC's silence on race was less a mistake or flaw, than a deliberate omission. The parallels can be drawn with Richard Goldstone's (cited in Christie, 2000) argument that the Nuremberg Trials were designed to individualise responsibility and therefore to remove collective guilt. In the South African context, the omission of race, along with the nation-building objective of the TRC, actively fed the denial by white beneficiaries of their role in the past and removed a collective (and racialised) sense of responsibility for apartheid. Richard Goldstone, a South African judge and chief prosecutor of the war crimes tribunals for the former Yugoslavia and Rwanda, writes that the Nuremberg Trials 'were a meaningful instrument for avoiding the guilt of the Nazis being ascribed to the whole German people.' (quoted in Christie, 2000, p.183)

Notably, the TRC's enabling legislation (the [Promotion of National Unity and Reconciliation Act, 1995](#)) itself is devoid of reference to 'apartheid'. Rather more coyly, it characterizes South Africa as a 'deeply divided society characterized by strife, conflict, untold suffering and injustice'. These 'divisions' remain opaque, unspecified and multifarious. It is almost as if the very word 'apartheid' is too ideologically explicit and offensive. There are no references to racism or race, aside from a reference to a future 'founded on the recognition of human rights, democracy and peaceful co-existence for all South Africans, irrespective of colour, race, class, belief or sex'. There is also an injunction that victims coming before the TRC should be treated equally without discrimination of any kind, but race is listed as only one of nearly twenty potential discriminations.<sup>45</sup> It could be argued that the legislation, which is quite literally the constitutive act of the TRC, decenters race through the use of descriptors that render the conflicts of the past unspecific and all-encompassing. In this, the legislation fell in line with the ethos of 'non-racialism' that dominated the anti-apartheid struggle through the ANC, as well as the muting of harsh racial cleavages that characterized the Mandela presidency. One wonders how the TRC would have responded if the legislation had inscribed race and racism as central signifiers in setting the historical landscape of violence through which the TRC was to walk. Indeed, from the position of hindsight in 2003, the legislation appears inordinately spineless on the issue of race.

The TRC was also the inheritor of a weighty, almost hegemonic, discourse of non-racialism. Although the past few years have begun to see a more critical interrogation of that tradition within the ANC historically, the decisive ANC victory in the 1994 elections transacted this tradition into the terrain of government and its institutions. As promised by President Mandela at his Presidential inauguration:

We enter into a covenant that we shall build the society in which all South Africans, both black and white, will be able to walk tall, without any fear in their hearts, assured of their inalienable right to human dignity - a rainbow nation at peace with itself and the world. (Mandela, 10 May 1994, np)

This discourse frowned upon racially-based explanations and accounts, preferring a more

ideological cast to the conflicts of the past. An exchange between former head of the South African Defence Force (SADF) General Constand Viljoen and the ANC's Ela Ghandi while debating the terms of the TRC Bill in 1995 illustrates the ANC's unease with characterizing the conflict of the past in simple race terms.

**General Constand Viljoen:** We need to consider reconciliation between who. Not between a number of perpetrators and a number of victims but reconciliation between two major groups. The Afrikaner people and the black people ... . Chairperson, reconciliation, true reconciliation in this country will be between the Afrikaner people and the black people ...

**Ms Ghandi:** General, you spoke about reconciliation between the Afrikaner and the black people and I do not think that has been the problem in the past. We have always regarded it as a question of reconciliation between democracy and a minority government which imposed its will on the majority of the people.<sup>46</sup>

Similarly, the terms on which the ANC waged its armed struggle emphasized the strategic nature of its targets and strongly averred racial attacks. A former head of MK's Special Operations unit, Aboobaker Ismail, told the TRC:

**A ISMAIL:** This was never a target, an attack against whites. We never fought a racist war. We fought to undo racism ... . We never set out deliberately to attack civilian targets. We followed the political objectives of the African National Congress in the course of a just struggle. However, in the course of a war, life is lost, and the injury to and the loss of life of innocent civilians sometimes becomes inevitable. The challenge before us was to avoid indiscriminate killing and to focus on enemy security forces. (Cited in TRC Report, Vol. 6, Section 3, Chap. 2, p. 277)

### **The International Human Rights Tradition**

Aside from these domestic compulsions that downplayed race, the TRC emerged at the moment when an international human rights paradigm intersected powerfully with the South African political transition. The TRC sought to install itself within and enact the normative framework of the international human rights movement, and as such formed part of the new post-apartheid state's embrace of the discourse and practices of human rights, embodied in the new institutions of transformation such as the Gender and Human Rights Commissions. The TRC formed part of this armory of institutions of 'redress' developed by the new post-apartheid government. Yet while the Gender and Human Rights Commissions were forward looking, the TRC examined the past, and this retrospective human rights gaze did not intersect easily with the legacy of a liberation struggle. This appears almost as an attempt to inscribe the values of the new South Africa retroactively, to build a new nation built on a constitutionalism and notion of citizenship in which racism could not be tolerated (Wilson, 2001) – even retrospectively.

Yet the embrace of human rights discourse inevitably transgressed the heroic legacy of the national liberation struggle. While the new South African citizen was to be shaped in the image of individual rights, past national identities were framed by collective struggle. The notions of justice, morality and strategy that informed the ANC's liberation struggle drew upon multiple threads, and only more recently the human rights approach. Far more potent infusions were those of African nationalism, of anti-colonial struggle, imbued with a

socialist rhetoric. In this network of articulations that made up the 'broad church' of the ANC, the transformation of social and economic power relations marched alongside the imperative of formal political democratization. Indeed, earlier sister revolutionary struggles in Southern Africa – those of Mozambique and Zimbabwe stressed social and economic transformation over formal democratization (Neocosmos, 2002, p. 8).

The TRC's adoption of international human rights as its juridical location and moral lodestar brought to it a constellation of limitations. David Kennedy (2002) has outlined the fundamental orientations of the human rights movement that place a further set of hurdles in the path of addressing structural violence, as its dominant focus on the formalism of political power excludes attention to social and economic injustice. He has argued that "... human rights crowds out other ways of understanding harm and recompense" and "occupies the field of emancipatory possibility ... by implicit or explicit delegitimation of other emancipatory strategies" (Kennedy, 2002, p. 108)

Further, Kennedy has pointed to the manner in which

the human rights movement practices a systematic lack of attention to background sociological and political conditions which will determine the meaning a right has in particular contexts, rendering the evenhanded pursuit of 'rights' vulnerable to all sorts of distorted, and distinctly non-neutral outcomes. (Kennedy, 2002, p. 110)

Critics of the Sri Lankan peace process and its attendant 'commissions of inquiry' have also remarked on how the 'dominant human rights framework' shaped the terms through which accountability was viewed and how violence was 'named and framed' in the Sri Lankan context.

The naturalization of the [dominant human rights framework] as the privileged vocabulary for accountability may also have pre-empted an important public dialogue regarding the politics of violence in that period. (Nesiah and Keenan, forthcoming, p.21)

The authors considered the implications of an analysis of accountability that focused exclusively on individual victims and perpetrators and the adoption of a legalistic methodology focused on 'case-by-case investigations of violations of state power'.

The focus on individual victims and perpetrators involved in each case abstracts from the various social forces that enabled and/or were complicit in those disappearances through the explicit or implicit legitimation in the name of law and order, nationhood, justice and so on. As a consequence the commission was not expected to address the material and ideological structures and contestations that were the constitutive background conditions of these incidents. (Nesiah and Keenan, forthcoming, p.18)

Mamdani has suggested that this narrow focus in South Africa was a consequence of the adoption of a Latin American analogy that was closely followed in the South African TRC, with its emphasis on individual violations perpetrated by an authoritarian state on a



relatively small number of citizens (Mamdani, 2000). This influence is apparent in the proceedings of two key defining conferences in South Africa prior to the establishment of the TRC that considered various methodologies of 'dealing with the past'.<sup>47</sup> In this sense, the South African truth commission was modeled closely upon its Latin American predecessors, despite the vast differences in political and economic context. In fact, this is not only the Latin American truth commission model, but the form of truth commission that has acquired general international dominance. South Africa inherited this 'traditional' form of truth commission, focused on the 'authoritarian regimes' from the 1960s.

The Latin [American] analogy obscured what was distinctive about apartheid. For the violence of apartheid was aimed less at individuals than at entire communities. And this violence was not simply political. It was not just about defending power but also about dispossessing people of the means of livelihood. ... the Latin [American] analogy obscured the colonial nature of the South African context, the link between conquest and dispossession, between racialised power and racialised privilege, between perpetrator and beneficiary. (Mamdani, 2000, p. 179)

Two more recent Latin American truth commissions in Guatemala and Peru have had to consider gross human rights violations in the context of wider structural violence in societies where racialised practices of exclusion, control and dispossession formed part of the fabric of violence alongside the physical violations of the body through direct repression (cf. Valji, 2004 for further information about Guatemala). It may be instructive to examine how these two truth commissions have grappled with this issue. In Guatemala, 'the Report points to racism, structural injustice, and the 'anti-democratic nature of institutions' as contributing to the underlying cause of the armed confrontation, as well as the anticommunist National Security Doctrine of the Cold War, and particularly the United States' support for the repressive policies of the Guatemalan state' (Hayner, 2001, pp. 48 - 49). The Report notes that the 'structures and nature of economic, cultural and social relations in Guatemala are marked by profound exclusion, antagonism and conflict ... violence was fundamentally directed by the State against the excluded, the poor and above all, the Mayan people, as well as against those who fought for justice and greater social equality'.<sup>48</sup> In Peru too, the parameters of violence towards racially oppressed groups cannot be neatly dissected into purely political categories.

The hallmarks of the 'human rights' practices of categorization and norms of 'codification' can also be identified in shaping the TRC's narrow interpretation of its mandate. The TRC's computer database, for example, was in part designed by a member of the Science and Human Rights Program from the American Association for the Advancement of Science (AAAS), Patrick Ball. The individual and physical focus of this database, developed through work with the non-governmental Human Rights Commission of El Salvador (1991) and the National Commission for Truth and Justice in Haiti (1995), is succinctly expressed in the title of a publication by Ball: 'Who did What to Whom?' (Ball, 1996). Several critical analysts have pointed to the exclusionary practices involved in the deployment of this particular human rights 'taxonomy' and a controlled vocabulary of data processing (Buur, 2003, and Wilson, 2001).

There was discomfort with the 'human rights approach' within the TRC itself.

Commissioner Wynand Malan expressed this in his Minority Report.

The Commission does not make any major contribution by again finding apartheid to be a crime against humanity. No doubt, it contributes to the needs and agendas of human rights organisations and the cause of a human rights culture in general by highlighting what is now trite international law. The question is whether such an unqualified finding does not create a double-edged sword in terms of the objectives of national unity and reconciliation. While the endorsement of a position in international law may contribute to national unity, it can as easily be divisive if separated from its historical context. This was the subject of debate within the Commission. (TRC Report, Vol.5, Minority Report by Commissioner Wynand Malan, pp. 448 – 449)

The liberation movements were adamant that the TRC's 'evenhandedness' implicit in this human rights approach flattened distinction and context. This apparent moral equivalence was precisely the source of the ANC's ire regarding the findings made by the TRC that the ANC had perpetrated gross human rights violations in the course of its just war. When given prior notification of the proposed findings prior to the publication of the Report, the ANC responded with outrage, and even sought to interdict the handover of the report:<sup>49</sup>

The TRC has grossly misdirected itself in its "Findings on the Role of the African National Congress", through the pursuit of objectives which are contrary to the spirit and the intention of the Act under which it was established. These "findings" show an extraordinary refusal on the part of the Commission to locate itself in the context of the circumstances which related to the struggle against apartheid, both within and outside the country ... . Accordingly, we will fight using all legitimate means, to defeat any effort which seeks to denounce the noble struggle the people waged, on the basis that it constituted a gross violation of human rights. (ANC, 1998)

While debating the TRC's Report in Parliament a few months later, the ANC charged that:

The net effect of the TRC's findings [on the ANC] is to delegitimise or criminalise a significant part of the struggle of our people for liberation and to subtract from the commitment made in our Constitution to honour those who suffered for justice and freedom in our land. Indeed, it could also be said that the erroneous logic followed by the TRC, which was contrary even to the Geneva Conventions and Protocols governing the conduct of warfare, should result in the characterization of all irregular wars of liberation as tantamount to a gross violation of human rights. We cannot accept such a conclusion, nor will the millions of people who joined in struggle to end the system of apartheid. ('National Response to TRC Report', Joint Sitting of the National Assembly and the National Council of Provinces, 25 February 1999)

These angry rejections of the TRC's findings on the ANC presaged the increasing marginalization of the TRC from the national stage. The TRC increasingly appeared dislocated from the wider concerns with the legacy of race that came to dominate national public debate as the TRC unfolded. The consequence was that the TRC was rapidly

bypassed – even sidelined – by the energy and emotion of the debates on racism that burst onto the public stage as the main phase of the TRC drew to a close in 1998.

#### **Post-transition: Renewed Debates on Race**

Post-1997, as the language of 'rainbow-ism' wore transparently thin against looming and ongoing racial inequality and as the TRC's most visible period drew to a close, there was an increasing galvanization of national debate around race, generating significant outbursts in official, academic and popular discourse. These crystallized around a series of national controversies and statutory and non-statutory initiatives to address and investigate the legacy of racism. First amongst these was the Human Rights Commission's investigation into racism in the media, which unfurled acrimonious debate, denial and dispute.<sup>50</sup> This was followed by the [National Conference on Racism](#) in Johannesburg in 2000.<sup>51</sup> At the same time, concerns with race and prejudice resurfaced in the international community, culminating in the [World Conference against Racism, Xenophobia and Related Intolerance](#) in South Africa in 2001.

The National Conference on Racism in 2000, which received significant government support and official authorization, provides a stark illustration of the diverging concerns of government. The 1998 TRC Report's Recommendations had opened with a Commitment to Reconciliation and Unity and called for a national conference on Reconciliation as follows:

In order to give expression to this commitment, we request the President of South Africa to call a National Summit on Reconciliation, not only to consider the specific recommendations made by the Commission, but to ensure maximum involvement by representatives of all sectors of our society in the pursuit of reconciliation. The Summit should be held towards the end of 1999. In this way South Africa, on the eve of the new millennium, should re-commit itself to a future characterised by reconciliation and unity by: -

- re-looking at the haunting memories of conflicts and division;
- opening our eyes to the legacies of the past. (TRC Report, Vol. 5, Chap. 8, pp. 304 – 305)

Along with all of the TRC recommendations, this proposal for a National Summit on Reconciliation sank like a stone. Instead, the energy of the state and key stakeholders went into the organization of the National Conference on Racism. The ANC's 'January 8' annual speech in 1999, some two months after the release of the TRC Report, noted firmly:

All of us must unite in resolute opposition to any suggestion that the national project of national reconciliation consists in tolerance of the apartheid legacy of racial and gender inequality, division and oppression. All of us, regardless of our race and colour, must take into account the actual reality that the perpetuation of this legacy constitutes the greatest threat to the democratic order, for which all of us paid such a high price to bring it into being. (ANC, 1999, np)

In academic terms, no doubt in response to this heated fracas and the sense of disappointment with the TRC Report, debates regarding race were examined in a conference entitled ['The Burden of Race? 'Whiteness' and 'Blackness' in Modern South Africa'](#), hosted by the University of the Witwatersrand (Wits) History Workshop and the Wits Institute for Social and Economic Research (WISER), and there was an increasing academic interrogation of the notions and practices of non-racialism.<sup>52</sup> Other civil society initiatives included the 'Home for All' Campaign (which later became known as the 'Home to All' Campaign). This was launched by white South Africans who were primarily motivated within a progressive framework. The Campaign sought to mobilize whites into a simultaneous apology for the wrongs of apartheid and a commitment to practical engagement with transformation. The 'Home for All' Campaign was signally unsuccessful and elicited hostility from whites who rejected any notion of complicity with apartheid or benefit from it. After all, the TRC had placed the blame elsewhere.

These wider social debates and initiatives had one thing in common: a striking absence of intersection with the TRC, although virtually coterminous. The TRC, its work and the terms of its focus, apparently, was irrelevant to this heated and burgeoning debate. As an active agent in shaping the terms of the social debate and domain of its interrogations (Mamdani, 2000, p. 177), it had seemingly defined itself out of currency of popular and national or state concerns.

These skirmishes perhaps reflect what Mamdani identified in 1999 as 'an impending clash between rainbow-ism and nationalism, between an embrace of inherited inequalities and a mobilization against it, between 'reconciliation' ideology and 'renaissance ideology' (Mamdani, 1999, p.3). Although the binary oppositions and easy equations proposed in this formulation are problematic and simplistic, the disconnections between the TRC and this burgeoning national debate on race contain something of this clash.

Indeed, it may be suggested that this increasing focus on race was precisely a reaction to the manner in which racism was lost in the TRC's processes and products. For an equally serious failure or consequence of the absence of focus on apartheid and racism was perhaps not only the circumscription of victims, but also the implicit circumscription of perpetrators to those who practiced acts of direct violence. As Mamdani has noted, the focus on direct political repression removed attention from white South Africa, directing culpability to the more limited numbers of 'direct' perpetrators within the state security forces, rather than the vastly more numerous beneficiaries of apartheid.<sup>53</sup> As a consequence, white South Africans could distance themselves from and even express horror and revulsion at the acts committed by state security forces without any sense of personal involvement, culpability or gain.<sup>54</sup>

Nesiah and Keenan have also noted a similar process in Sri Lanka in which those who enabled and benefited from the violations of the past (in a more systemic sense) were obscured by the individual and physical focus.

The [dominant human rights framework] methodology of individual cases led to a focus on undisciplined security services, rather than sketching a social map of violence that grapples with how the very fabric of our social divisions is a narrative about the 'willing executioners' who sustained the violence of the last

decade. (Nesiah and Keenan, forthcoming, p.25)

### **Investigative Body or Symbolic Process?**

The question of appropriate focus for truth commissions – or indeed any 'transitional justice' mechanism – cannot be considered purely in theoretical terms. 'Reconstituting' the terms of its mandate would also have enormous practical implications. For those in the TRC who raced against time to contribute something of meaning through investigations into the 'mere' 22 000 cases that came before it, the notion of addressing the enormity of structural violence affecting millions of South Africans seemed impossible, given the limited life span of the TRC. What would this have meant for its work? Should individual statements have been taken concerning the full panoply of racially discriminatory legislation that assailed every aspect of black life in South Africa? Perhaps at most a number of hearings could have been held on the impact of a host of legislative measures, involving the pass laws, forced removals, migrant labour, inner city Group Areas removals, education, such as the Mixed Marriages Act, the Population Registration Act, Bantu Education Act, Reservation of Separate Amenities Act and so on. However, these could only have been symbolic gestures.

It can also be argued that the former apartheid government never concealed its actions in this regard: these were not covert or denied activities. Apartheid and its racial 'discriminations' were never denied or concealed by the state, although it denied the appalling human consequences. There is in addition a vast literature, both academic and activist, that explores these dimensions of structural violence. The TRC probably would not have contributed anything new to these studies. Instead, it made a specific contribution in the terrain of denied and covert violations.

This question points to two key issues of fundamental orientation and practice for truth commissions. Firstly, are they an investigative body established to address the demand for answers from thousands of victims, or are they a symbolic enquiry to serve a national function of transition, which may or may not in the course of its work achieve the resolution of a few victim cases? Is a truth commission there to conduct investigations into actual cases and seek answers to individual enquiries, or should it simply receive evidence and issue reports that do not necessarily undergo investigation? Unlike many other truth commissions, the South African TRC sought to investigate and corroborate cases, rather than simply receive statements under oath. The TRC took its investigative tasks seriously, and this, in conjunction with its amnesty process, yielded some significant results. These exposed state transgressions in areas where denial had prevailed. Yet if a commission is truly intended to address victim needs and questions, it cannot possibly achieve this in the usual period of one or two years. No structure would be able to investigate and report on thousands of cases in that time scale.<sup>55</sup> This would require a long term body with significant resources.

Secondly, should truth commissions focus on the broad structures of social and economic inequality which provide the immediate context for the perpetration of gross human rights violations of the body, and which also themselves generate violations of a different order? Can both be done? A focus on structural violence may shift attention from individual victims, who are usually articulated as being the *raison d'être* for such commissions. Further, where do the boundaries of structural oppression end? Does this not ultimately

imply an interrogation of the national and international ensemble of conditions of human exploitation, indeed the nature of global capitalism itself? This is a far remove from investigating the killer of Mr X or the torturer of Ms Y. This debate regarding the operations, functions and orientations of truth commissions requires attention.

## **Interpretations of Violence**

### **Speaking of Violence**

This article has criticized the distance placed by the TRC between violations and the racialised power relations in which they took place, and the disconnections effected by the selective admission and exclusion of race. Yet the displacing of race had one arguably positive effect, namely the opening of space to experiences of violence that were not subsumed under or 'reduced' to race. Race and racism runs the risk in South Africa of becoming over-determinant as a form of explanation. As the South African 'master narrative', it can be used as a cover-all for encounters, conflicts and power relations where race may be only one dimension. What was striking about many of the TRC statements was the variety and complexity of the occasions of violence they depicted. They placed stress upon the usual stereotype of victim (as black activist) and perpetrator (as white state agent) ascribed to the TRC, as here by Mamdani:

The TRC's version of truth was established through narrow lenses, crafted to reflect the experiences of a tiny minority: on the one hand, perpetrators, being state-agents; and, on the other, victims, being political activists. (Mamdani, 2000, p. 178)

Victim statements and testimony to the TRC constantly transgressed these simple binaries that are often assumed to be the bedrock of the TRC. At a simple statistical level, the largest number of deaths reported to the TRC were those of black civilians killed by other black civilians, mainly during clashes between the UDF/ANC and Inkatha, later the Inkatha Freedom Party, and these took place largely in the period from 1990 to 1994.<sup>56</sup>

Even in cases where the state's security forces were the perpetrator, these could often involve black perpetrators. Black policemen frequently appeared as torturers and killers alongside their white counterparts. Indeed, some of the most harrowing accounts of torture involved black perpetrators, particularly in the homelands. Former Vlakplaas commander, Eugene de Kock, described this 'non-racial world' of victims and perpetrators:

**MR HUGO:** Mr De Kock, you say on page 15 that there could possibly be a perception that you are an arch racist and that your actions were in essence aimed at prejudicing the Black population and you say that that is in fact not true and that in fact you were prepared to kill people like Dirk Coetzee and that you knew about certain operations that were planned against Marius Schoon, Ronnie Kasrils and Joe Slovo and that you were involved in actions against Peter Vale, and that the only thing that was important to you, was the protection of the State's interests and not racism as such?

**MR DE KOCK:** Yes. I just want to expand further. All my units were Black, all the units in which I served which I helped to establish and where I and some of

my colleagues fought on the ground, there were no races, there were only members of the unit or there were no Whites or Blacks. (Amnesty hearing, 1 October 1997, Port Elizabeth)

For many victims who made statements to the TRC, race was often mentioned as a mere descriptor, a category along with *tall, fat, wearing a uniform, a moustache*, and so on. The following extract from the testimony of Siphso Kroma, a youth activist from Oudtshoorn, describes his 'non-racial' group of torturers, including white, Coloured and African policemen.

I was given a taste of what I was going to get. I was thrown on the tar road, and they started jumping on me. There is one Coloured chap, I don't know him, he is a policeman, he knew a bit of Xhosa, that guy dealt with me, he did his job . . . . When I went in [the police station], I identified Mngoma he was a security policeman and the late Piet Gouws, I am glad he is dead and also Mnyamana they call him [indistinct] in the township and Kurt Bouman and there was a group of policeman that I obviously don't know who are from Uitenhage I suppose. And this Coloured chap was amongst them . . . . And they brought up the electric - electric wiring, all ten of my fingers were wired with this thing, the live wire the plastic is of, the one that is covering the wire. And the other one moved right around - around my body. Sergeant Mnyamana task then was to ask me questions, and he - as I was sitting - three of them were sitting on my legs - Piet Gouws is a very big man, he was playing rugby for SWD in the front row, very strong man. He was sitting on my lap, the Coloured chap that I am talking about his task was to beat me up and he - he made sure that he was hurting me. (HRV hearing, George, 18 June 1996)

As a result of their direct or indirect involvement with the apartheid state, their immediate proximity and the particular ire directed at 'traitors' from one's own ranks, black police personnel and perceived collaborators were consistent targets for attack by civilian protestors and liberation movement operatives, and experienced a far higher number of attacks than their white colleagues. At the same time, it was understood that black police were almost always the junior pawns in the security forces, as Kroma continued to point out:

There were people who were using them and my problem is that those people who have been responsible for this, are now sitting in very high positions and we are pointing fingers to Mngoma and the rest of them and I think that is time that we can be able to get behind the whole truth and get those people. Because to me they are the people who are suppose to come in front of the Truth Commission as I am saying to you that there is nothing that Mngoma himself and [indistinct] and the others did, they were just being given instructions that this - this is what you are suppose to be doing. (HRV hearing, George, 18 June 1996)

### **Demographics of Violence**

Victim statements also gave shape to the racial geography and demography of political violence, and its overwhelming circumscription to black townships and black victims.

Political violence barely touched the lives of the vast majority of whites.<sup>57</sup> The TRC did not particularly emphasise this point or draw attention to it in its Report. Although not a random statistical sample, the TRC statements did point to the tiny numbers of whites who suffered gross human rights violations during this period.

	No. of Statements	% Statements from each group	% Total population
African	19,144	89.9	76.1
Coloured	354	1.7	8.5
Asian	45	0.2	2.6
White	231	1.1	12.8
Total Statements	21,297	100.0	100.0 <sup>58</sup>

The Report does note the low number of white deponents:<sup>59</sup>

The low number of white deponents is not wholly a consequence of hostility towards the Commission by large sections of the white community. Indeed, the Commission made a concerted effort to reach all sections of the community. Special appeals for whites to come forward were made through the media and the Commission held several sectoral hearings focusing on issues of interest to the white community. The reality is that the conflicts of the past affected very few whites in comparison to the rest of the population, so very few came forward to make statements. (TRC Report, Vol. 1, Chap. 6, Appendix 2, pp. 168 – 169)

Although whites developed a powerful sense of political victimhood through particular incidents, such as the 1983 Church Street car bomb and the 1986 Magoo's Bar car bomb, both detonated by the ANC, and the 1993 St James Church attack by APLA members, the national numbers of white casualties remain very small relative to the overall picture of all casualties. Very few whites were killed in the period from 1960 to 1994, numbering at most a few hundred.<sup>60</sup> By not considering and presenting the low numbers of whites who suffered gross human rights violations, these white notions of political victimhood were left unchallenged and were reinforced by the public profile the cases received, as well as the sense of racial 'symmetry of suffering' this created. This type of equation of suffering is evident in many of TRC Chairperson Desmond Tutu's pronouncements, carefully honed towards racial inclusivity. In his opening paragraph of his Foreword to the TRC Report, Tutu states,

All South Africans know that our recent history is littered with some horrendous occurrences - the Sharpsville and Langa killings, the Soweto uprising, the Church Street bombing, Magoo's Bar, the Amanzimtoti Wimpy Bar bombing, the St James' Church killings, Boipatong and Sebokeng. We also knew about the deaths in detention of people such as Steve Biko, Neil Aggett, and others; necklacings, and the so-called 'black on black' violence on the East Rand and in KwaZulu Natal which arose from the rivalries between IFP and



first the UDF and later the ANC. Our country is soaked in the blood of her children of all races and of all political persuasions. (TRC Report, Vol. 1, Chap. 1, p. 1)

Building on the notion that 'we all suffered', Tutu ensured that the TRC was a place to which any person who experienced a gross human rights violation could come, regardless of political affiliation or race. This effort at inclusivity was arguably necessary in order for the TRC to have as wide a reach as possible and fulfill its 'nation building' function, but had the cost of obscuring the racial 'graph' of death. As a result, the capacity to engage white and black notions of suffering was lost.

#### **Inter-Civilian Violence: the Third Force and 'black-on-black' violence**

The TRC also had to grapple with the controversial question of 'inter-civilian' violence. Despite the fact that the central conflict in South Africa was a clash between the white apartheid state and the black oppressed majority, the overwhelming numbers of deaths were of black South Africans killed at the hands of other black South Africans in apparent 'inter-civilian' violence. The TRC had to navigate strongly held beliefs and explanations regarding this apparent anomaly.

Two starkly counterposed arguments dominated explanations of this 'formation of violence', namely the apartheid state's account of 'black-on-black violence' and the left/liberal position on the 'Third Force'. The TRC attempted, perhaps not entirely successfully, to move beyond these to a more nuanced interpretation that accepted elements of the 'Third Force' argument but sought to render it more complex and historically situated.

Most inter-civilian deaths took place between 1986 and 1994 in the context of the bloody conflict between the ANC and Inkatha (later renamed the Inkatha Freedom Party (IFP)), a chauvinist Zulu ethnically-defined organisation with a history of collaboration with the white state. The state labeled this as 'black-on-black' violence, a term that essentially distanced the state from any involvement in the violence and depicted black South Africans as inherently violent and 'barbaric'. An extract from a Ministry of Foreign Affairs secret memorandum to all members of the State Security Council (SSC), dated as early as 12 November 1984 provides an early example of the state crafting interpretations of political violence.

'Unrest situations: suggested terminological guidelines for official spokesmen

#### 1. Goals

- 1.1 To withhold positive political/social recognition, credit and publicity from the organisers (UDF et al) of riots, boycotts etc.
- 1.2 To channel the anger of the innocent masses against criminal activities.
- 1.3 To educate local and international opinions about the criminal nature and uselessness of these activities.

#### 2. The Conceptual Framework for the Terminology

From the abovementioned goals it is clear that the main emphasis should fall on specific common law crimes and that references to crimes with political connotations should mostly be avoided, for example: arsonists, looters, murderers,

muggers

Where it is not practically possible to refer to specific common law crimes, descriptions such as "rioters", "boycotters", "protesters" should rather be avoided and replaced where applicable with descriptions such as: hooligans, vandals, thugs. Where the instigator is associated with widespread actions/unrest his status is enhanced. As a guideline, it is suggested that militant organisations (ANC, UDF etc.) should rather be linked to individual atrocities (e.g. car bombs) than to mass actions.

### 3. Innocent victims of criminal actions

It is of the utmost importance that publicity should be given to the victims of violent activities. The "human dimension" is the key factor which must be used to foment sympathy and condemnation ...<sup>61</sup>

Yet, in line with the strategy of 'contra-mobilisation', the state provided covert assistance to opponents of the liberation movements such as the Inkatha Freedom Party (IFP). Contra-mobilisation was a key security perspective adopted in South Africa, in which 'moderate' blacks were organized and supported to oppose the revolutionary movements. This was a covert strategy concealing the hand of the state in the fostering of conflict.<sup>62</sup> In this sense, Inkatha could be termed a 'surrogate' of the state in many respects.

When evidence of this secret collaboration emerged in the 1990s, it was widely taken by the liberation movements as confirmation of the fact that inter-civilian violence was a creation of the state. The term 'Third Force' came to represent this perception particularly in the period from 1990 to 1994, when inter-civilian violence was at its peak, taking the form of anonymous wholesale violence, indiscriminate attacks on communities at social functions such as funerals, 'train violence' in which hundreds of commuters were thrown to their deaths, and other similarly inexplicable forms of violence aimed at severe political and social disruption, perpetrated often by unidentifiable masked men. The term 'Third Force' referred to the covert involvement of the state as a 'hidden hand' in this violence.<sup>63</sup> In this view, the 'Third Force' was a secret plan by the state to destroy the ANC and its allies.

The TRC, although acknowledging that it was not able to make much headway in investigating the particular forms of violence in the 1990s,<sup>64</sup> tried to develop a more nuanced and mediated interpretation of the 'Third Force' position, which had tended to be construed in simple terms as a conspiracy organized by the central state. The TRC suggested that while middle and lower ranking police personnel were involved in varying degrees in the enabling and fomentation of violence through longstanding partnerships with local anti-liberation groups or individuals, primarily the IFP, there was no evidence available of a coherent or formally constituted 'Third Force' centrally directed by the state and its political leadership. However, the tentative nature of this conclusion was stressed, in the absence of adequate evidence to the contrary.<sup>65</sup>

The TRC also pointed to high levels of political intolerance amongst ANC and IFP supporters, and also sought to stress the multiple strands of local conflicts and complex social factors involved.<sup>66</sup> Although the conflict was primarily between the IFP and the ANC, it had various dimensions that drew upon identities of ethnicity, age and gender, and particularly social position as migrant or township resident. Structural, linguistic and social

cleavages fed into the conflicts, which also intersected with criminal violence and other socio-economic conflicts. The TRC tried to take note of these multiple social dimensions of the conflict. Further, evidence gathered by the TRC indicated that liberation movement supporters were significantly involved as actors in the conflict.

The notion of the 'Third Force' tended to absolve the liberation movements, particularly the ANC, of any active role in or responsibility for the violence of the 1990s. The 'Third Force' theory reflected the 'over-centralisation' of perceptions of political conflict, in which the state was all-powerful and undifferentiated, and the State President ordered every act.<sup>67</sup> In the view of the TRC, this type of 'master hand' conspiratorial argument, in which the state was virtually omniscient and engineered and manipulated all conflicts, robbed local communities and activists of the capacity for independent thought and action – a depiction much at odds with the dynamic creativity of resistance ascribed to local communities during the 1980s. Further, the 'Third Force' argument could not take account of the different strands that made up some of the local texture and the mobilising factors in these conflicts.

The ANC responded with hostility to the TRC's effort to broaden the understanding of the violence of the period, interpreting this as a dismissal of the Third Force in its entirety.

Many who lost loved ones or who lived through terror that seemed incomprehensible in its cynical inhumanity will wonder at what seems to be the dismissal [by the TRC] of the existence of a 'Third Force': the fact of the existence of a deliberate strategy and programme by the powers that be, as they then were, to foment violence among the oppressed, and to arm and lead groups that sowed death and destruction before and especially after 1990.<sup>68</sup>

In fact, the TRC did not dismiss the 'Third Force' argument; rather, it stated that it could not find 'proof' of an organised plot by the central state. It also sought to situate the 'Third Force' in the rich, wider and more diverse settings of local dynamisms, longstanding allegiances of security force officials, and the cultures of war that had come to prevail amongst the various actors in the violence.

At heart, understanding the inter-civilian violence of the period required a step beyond the fixed categories of class, race and gender that had long formed the 'holy trinity' of social analysis for the liberation movements. The ANC was uncomfortable with other identities cast as 'reactionary', such as ethnicity, and ignored the multiple other forms of belonging that had meaning to segments of the 'black oppressed'. The liberation movements were often not able to consider that their strategies for political resistance at times transgressed important symbols and values held, for example, by rural migrant workers, including social norms around age, gender, and discipline, all of which were deeply implicated in the clash between the IFP and the ANC. In addition, degrees of criminality are evident in the swathes of violence that unfolded, further complicating the picture (cf. Gear (2002) for an analysis of what was considered 'legitimate' and 'illegitimate' violence and crime amongst self defence units (SDUs) during the anti-apartheid struggle).

The TRC was, by its own admission, a small contributor to the debate around the causes and character of violence in the 1990s period. Yet its discussions and evidence, particularly in the testimonies of Self Defence Unit members to the TRC's Amnesty Committee, opened

important questions and sources. In particular, these testimonies spoke to an important widening of the debate beyond 'black on black violence' and the 'Third Force', and offered a depiction of social ruptures and cleavages beyond those of race.

## Conclusions

This article has attempted to assess the TRC's engagements with race and racism and has argued that the form they took was the result, although by no means a predetermined result, of the particular combination of contexts, influences and choices made both within and without the TRC. As a result, these engagements were partial, unsystematic and even contradictory. In this the TRC appears sharply detached from the concerns with race which have become the substance of national debate, media interest, court cases and disputes in the formal and informal terrain in South Africa.

Does this apparent disconnection invalidate its work and its contribution? Did its 'human rights' focus on torture, killings and abductions condemn it to rapid national oblivion, while the 'real' legacy of apartheid violence took centre stage? Was the nexus between race and economic exploitation the real language of transition in South Africa? These are painful questions. The TRC was clearly the product of a particular historical moment, and bears the limitations and markings of that moment in some damaging ways. The 'lies' that it challenged and destroyed (the denial of the prevalence of torture for example) seemingly left other lies intact (whites were not the beneficiaries of apartheid). Yet the discrediting of apartheid was also achieved through the public testimony of one victim and the confession of one perpetrator. The TRC played a significant part in rupturing the highly segregated historical knowledge amongst South Africans.<sup>69</sup>

At present, it appears that the more potent site of transition, the real language of change, is around race and the economy and the cultural legacy of racism. This has implications for the proposed pursuit of trials against perpetrators and the ongoing saga of reparations. As South Africa grapples with social 'disorders' exacerbated by dire racialised poverty such as AIDS and crime, cases against antiquated killers and torturers hardly appear to merit the title 'Priority Crimes' given to the unit pursuing post-TRC cases.<sup>70</sup> As the government begrudgingly agrees to pay limited individual reparations, the entire reparations debate appears fragmented into clusters of victims seeking redress on both the domestic and international fronts with active government hostility.<sup>71</sup>

This article has also sought to highlight some of the problematic assumptions and ideological frameworks which govern the terrain of 'transitional justice' more globally, and outline the South African experience as a particular manifestation of these constraints. While of particular import in the South African context, race and other categories of structural inequality are also present as critical features of a number of other conflicts that have attracted the attention of those concerned with transitional justice. Engaging the debate around structural violence is a pressing concern, both in South Africa and abroad.

## Notes:

<sup>1</sup> This introduction updates the proposal *Consolidating Citizenship and Reconciliation in the Post-Truth and Reconciliation Commission Period* submitted to the Ford Foundation

(2000).

<sup>2</sup> Perpetrators of political violence had to fully disclose details of their past crimes in order to qualify for amnesty. Simply put, it was agreed that justice would be overlooked provided that the perpetrators publicly told the truth. The truth, it was hoped, would help the process of healing individual victims and the nation.

<sup>3</sup> Theissen, G. (1996). *[Between Acknowledgement and Ignorance: How white South Africans have dealt with the apartheid past](#)*. Research report based on a CSVR-public opinion survey conducted in March 1996.

<sup>4</sup> Dewhirst, P. & Valji, N. (2003, April) *[Little joy, no rainbow, victimized again](#)*. City Press.

<sup>5</sup> Oakley-Smith, T. (2003, May). Editorial, *The Star*

<sup>6</sup> While 'race' and 'racism' are clearly not the same term or concept, the TRC's framework of examining sites of violations means that a consideration of race would necessarily involve a consideration of racism. The two terms are cited together to refer to the nexus of violations between the two that fell within the TRC's ambit of examining abuse.

<sup>7</sup> See TRC Report, Volume 1, Chapter 4, Appendix, pp. 94 – 102.

<sup>8</sup> The time frame was later extended to 10 May 1994.

<sup>9</sup> This would cover the period of National Party rule and its legislated program of apartheid, although a fully comprehensive analysis of structural violence and racism would have to address the colonial period in South Africa too.

<sup>10</sup> This stance was also reflected by ANC MP Johnny de Lange, one of the key figures in drafting the TRC legislation, who commented that the TRC 'was not intended to deal with the many wrongs of the past, but only the above-mentioned physical human rights violations, during a specified time period'. (De Lange, 2000, p. 27). Omar and De Lange's views are strangely at odds with that expressed by their fellow ANC member Kader Asmal, then serving in the Cabinet with Omar, in *Reconciliation through truth: A reckoning of apartheid's criminal governance* (1996, pp. 25 - 27). Asmal makes no intervention in this regard at the Parliamentary debate. The differences of opinion within the ANC on this matter remain to be explored.

<sup>11</sup> While the TRC and its Report attempted to address the gendered dimensions of violence through hearings for women and including a specific chapter on women in its Report, the ethnic dimensions of violence did not receive even this minimum of attention, despite the manner in which ethnicity was deeply implicated in the physical violence it examined.

<sup>12</sup> It is perhaps worth noting that an obvious but unaddressed question arises from the TRC's focus on bodily violations – why were black bodies the overwhelming recipients of violence?

<sup>13</sup> See the *Submission to the Truth and Reconciliation Commission concerning the relevance of Economic, Social, and Cultural Rights to the Commission's Mandate*, submitted by Community Law Centre (University of the Western Cape), Development Action Group, Legal Resources Centre, Black Sash, Centre for Human Rights (University of Pretoria), NGO National Coalition, National Land Committee, National Literacy Cooperative, People's Dialogue and Urban Sector Network, 18 March 1997.

<sup>14</sup> The Commissioner meeting minutes of 20 and 21 February 1997 note as follows: 'Discussion followed on the need to define *detention without trial, forced removals and arson* as gross human rights. Statement takers are currently being asked to make judgement calls on the category of *severe ill treatment*. It was agreed that this will be discussed at the next HRV Committee meeting on findings. A document offering elucidation, refinement and instructions will be drafted.'

<sup>15</sup> The urgent need for a specific gender focus was also the subject of a submission made to the TRC in 1996 by a Coalition headed by the Centre for Applied Legal Studies at the University of the Witwatersrand, which also sought to argue that the term severe ill-treatment should be used as a more inclusive net to capture the experiences of women. The TRC Report noted that while 'much of their discussion [in the submission] dealt with gross human rights violations as defined by the Commission, the submission also devoted some time to questioning the way gross human rights violations were understood, thereby masking the types of violations more commonly suffered by women.' TRC Report, Vol. 4, Chap. 10, pp. 282 - 283. For further discussion of the question of gender and the TRC, see for example Ross (2003), Goldblatt and Meintjies (1996).

<sup>16</sup> An overview of these submissions is not complete without an examination of the parliamentary debates that took place around the TRC Bill. It is therefore recommended that a close reading should be done of these Hansard debates to analyse whether or not it really was Parliament's intention to include wider structural apartheid violations, prior to the passing of the TRC Act.

<sup>17</sup> Submission K, 'Memorandum to Summarise Previous Submissions by the former SAP' to the Portfolio Committee on Justice (National Assembly) on the Promotion of National Unity and Reconciliation Bill, pages 11 and 12, point 3.1.9. Portfolio Committee on Justice documentary collection.

<sup>18</sup> Document 4E entitled "Proposed Amendments". Point 22 suggests that 21 (3) (ii) line 40: add 'racism' after 'malice'. Portfolio Committee on Justice documentary collection.

<sup>19</sup> Amnesty hearing transcript, 6 October 2000, Cape Town, of the amnesty application by Theminkosi Henge regarding the shooting attack on a civilian bus near Beaufort West on 27 August 1993 in which eight people were injured.

<sup>20</sup> At one key moment, however, the TRC's leadership in the form of the Chairperson and Deputy Chairperson, did express some outrage and rejection of the views put forward by former State President FW de Klerk at the questioning of political parties held in May 1997. This 'pronouncement' and explicit denunciation resulted in legal action by the

National Party and ultimately resulted in an out of court settlement and an apology by both Tutu and Boraine. See TRC Report, Vol. 1, Chap. 7, pp. 190 – 191, and also Boraine, 2000, pp. 156 – 171.

<sup>21</sup> The protocol form underwent a number of transitions and versions allowing varying amount of space for free narrative expression by the deponent, but remained focused around these four gross human rights violations.

<sup>22</sup> Judeline Clark, ['Women's personal Experience of telling their stories at Public Hearings of the TRC: A Psychological Overview'](#) presentation on 12 June 1999 at the Commissioning the Past Conference, University of the Witwatersrand, Johannesburg (personal notes from presentation).

<sup>23</sup> See Annelies Verdoolaege ["The Human Rights Violations Hearings of the South African TRC: a bridge between individual narratives of suffering and a contextualizing master-story of reconciliation"](#), for several graphic examples of this brusque curtailment.

<sup>24</sup> [The Promotion of National Unity and Reconciliation Act No. 34 \(1995\)](#) specified the following criteria:

'(3) Whether a particular act, omission or offence ... is an act associated with a political objective, shall be decided with reference to the following criteria: (a) The motive of the person who committed the act, omission or offence;

(b) the context in which the act, omission or offence took place, and in particular whether the act, omission or offence was committed in the course of or as part of a political uprising, disturbance or event, or in reaction thereto;

(c) the legal and factual nature of the act, omission or offence, including the gravity of the act, omission or offence;

(d) the object or objective of the act, omission or offence, and in particular whether the act, omission or offence was primarily directed at a political opponent or State property or personnel or against private property or individuals;

(e) whether the act, omission or offence was committed in the execution of an order of, or on behalf of, or with the approval of, the organisation, institution, liberation movement or body of which the person who committed the act was a member, an agent or a supporter; and

(f) the relationship between the act, omission or offence and the political objective pursued, and in particular the directness and proximity of the relationship and the proportionality of the act, omission or offence to the objective pursued, but does not include any act, omission or offence committed by any person referred to in subsection (2) who acted- (i) for personal gain ...; or (ii) out of personal malice, ill-will or spite, directed against the victim of the acts committed.'

<sup>25</sup> Amnesty hearing of Johan Hendrik Roelofse, 2 August 2000, Johannesburg, for the fatal shooting of a black civilian, Victor Mlotshwa, who was walking along the road in the Krugersdorp district on 21 March 1993. Mr Roelofse was refused amnesty and the murder described by the Amnesty Committee as a 'drunken frolic'. The amnesty decision states: 'The act was totally unjustified in the circumstances and constituted a cold-blooded murder. There is also no merit in the Applicant's claim that he was a supporter of the AWB and his action cannot be regarded as an action against a political enemy but an act of sheer racism.

The application is therefore refused.' (AC/2000/206)

<sup>26</sup> See amnesty decision AC/97/0007 for Justice Sekgopa, as well as AC/97/0027 for Phillip Matela, Thami Hlobo and Jeremiah Moikabi. The amnesty hearing was held on 27 March 1997 at Bloemfontein.

<sup>27</sup> Amnesty Hearing, Mr De Wet Johan Strydom (AM5168/97), 19 November 1998, Welkom. See amnesty decision AC/98/0113.

<sup>28</sup> See amnesty decision AC/2000/0186.

<sup>29</sup> See amnesty decision AC/1999/0045.

<sup>30</sup> See amnesty decision AC/1999/0342.

<sup>31</sup> See amnesty decision AC/2000/0144. This particular incident had a sequel in that three white right wingers then shot at a bus carrying black passengers later that same day, in retaliation for the beachfront attack. The 'ringleader' of the group, David Petrus Botha was refused amnesty as he had no direct instruction from his organizations to conduct the attack, while his two subordinates Adriaan Smuts and Eugene Marais, were granted amnesty. See AC/1997/0053.

<sup>32</sup> This is indicated by the analysis of PAC amnesty hearings conducted by TRC researcher Jane Argall in an internal TRC document which provided the basis for the Volume 6, Section 3, Chapter 4, pp. 375 – 441 in the TRC Report.

<sup>33</sup> The Business sector hearing and Chapter 2 of Volume 4 that covered this hearing also sought to grapple with the 'theoretical' question of the relationship between capitalism and apartheid, a longstanding debate amongst South African historians, discussed below. This was a rare foray into the wider debates around race in South Africa.

<sup>34</sup> As cited in the TRC Report: 'A number of institutions were identified: the media, business, prisons, the faith community, the legal system and the health sector. All these sectors had, over the years, come under attack for what was seen by some as their complicity with the apartheid system.' TRC Report, Volume 4, Chapter 1, p. 2 (Foreword and Context of Institutional and Special Hearings)

<sup>35</sup> Chapter 4 in Volume 1 ('The Mandate') also discusses the impact of apartheid and racism to some extent.

<sup>36</sup> At the request of the TRC's Research Department, a group of historians from the University of Cape Town (UCT) and the University of the Western Cape (UWC) engaged in a process of drafting a chapter that presented a detailed account of the pre-mandate period and the development of apartheid. A lengthy chapter was indeed produced, written in the main by UWC historian Gary Minkley. This draft chapter then underwent a series of subsequent re-writes, with the dual intent of drawing in black authors as well as producing a more readable version for the Report as it was felt by Commissioners that the draft



chapter was too academic. However, the product at the end of this was apparently deemed unusable. At the final hour, one of the TRC Researchers, John Daniel, wrote a document that became chapter 2, ('Historical Context'). The longer chapter languishes unseen as part of the TRC archives.

<sup>37</sup> These comments are made on the basis of my own experience working in the TRC for six years, and represent my own views only, which may not be shared by other TRC staff members or Commissioners.

<sup>38</sup> See Khoisan, 2001, pp.114 – 125.

<sup>39</sup> See T Bell and D Ntsebeza, 2001, pp. 319 - 343 for an account of the saga.

<sup>40</sup> This is an extensive debate which can only be referred to tangentially. For a more detailed overview, see, for example, H.M. Wright (1977), C.T. Saunders (1988), D. Posel (1991) and N. Alexander (2002).

<sup>41</sup> For a more critical examination of the history and practice of non-racialism within the ANC, see for example N. Alexander (2002) and N. Ndebele & N. Nieftagodien "The Morogoro Conference: A Moment of Self Reflection for the ANC" in South African Democracy Education Trust (eds), *The Road to Democracy, Volume 1, 1960 – 1970*, Cape Town, Zebra Press, forthcoming.

<sup>42</sup> Although the TRC's Amnesty Committee continued its work into 2001, the TRC's heyday from the start of its public hearings in April 1996 to the handover of its first five volume Report in October 1998 co-incided with the Mandela presidency.

<sup>43</sup> See for example, the debates in J Daniel, A Habib & R Southall (Eds.) *State of the Nation: South Africa 2003 – 2004*, Human Sciences Research Council Press, Cape Town, 2003. See in particular the Introduction, and the chapters forming part of Part I : Politics.

<sup>44</sup> This depiction has been challenged – see Fullard and Rousseau (2003a) for a critical review of this argument.

<sup>45</sup> The potential discriminations were 'race, colour, gender, sex, sexual orientation, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin or disability'. [Promotion of National Unity and Reconciliation Act, No. 34 of 1995](#), Chapter 2, point 11 (b).

<sup>46</sup> Transcript of the submission by General Constand Viljoen to the Portfolio Committee on Justice, 6 February 1995, and subsequent debate, pp. 29 -30. Justice Portfolio Committee documentary collection.

<sup>47</sup> See the two publications outlining these two conferences, namely *Dealing with the Past* (eds) A Boraine, J Levy and R Scheffer, IDASA, 1997, which contains the proceedings of a February 1994 conference in South Africa entitled *Justice in Transition: Dealing with the Past*, and *The Healing of a Nation?* (eds) A Boraine and J Levy, Justice in Transition, 1994,

based upon a conference some months later.

<sup>48</sup> See [Guatemala: Memory of Silence](#) (Conclusions and Recommendations).

<sup>49</sup> For an overview of this legal challenge, see TRC Report, Vol. 6, Section 1, Chap. 4, pp. 55 - 58

<sup>50</sup> The South African Human Rights Commission (HRC) website contains documentation relating to this investigation. See [http://www.sahrc.org.za/background\\_to\\_the\\_investigation.htm](http://www.sahrc.org.za/background_to_the_investigation.htm) and also Claudia Braude's paper *Cultural Bloodstains: Towards Understanding the Legacy of Apartheid and the Perpetuation of Racial Stereotypes in the Contemporary South African Media*. Braude's paper generated even more controversy.

<sup>51</sup> For background information regarding this South African conference, see for example the [South African Human Rights Commission](#).

<sup>52</sup> Ongoing research by Raymond Suttner into the 'cultures' of the ANC is an example of this critical reflection. See for example his paper [Culture\(s\) of the African National Congress of South Africa – exile and prison experiences](#) presented at the Wits Institute for Social and Economic Research, Johannesburg, 15 August 2002.

<sup>53</sup> See Mahmood Mamdani, 'Reconciliation Without Justice', South African Review of Books, Vol 46, Nov/Dec 1996; and "A Diminished Truth" in *Siyaya*, Issue 3, Spring 1998.

<sup>54</sup> Mamdani's point regarding the exclusion of beneficiaries from the 'social debate' created by the TRC perhaps implicitly contains a somewhat idealistic view that a wider sense of culpability in the violence of apartheid among white South Africans would have engendered a more willing or active participation from this group in social and economic transformation. White privilege is precisely the target of such transformation. Are there any examples of conflicts where 'complicit' or 'guilty' generations have willingly submitted to the loss of privilege and embraced a program that ensures the demise of their economic and social dominance? And at any rate, despite the fact that the TRC did not generally address this wider complicity, many white South Africans responded to the TRC as if it had done so.

<sup>55</sup> Kader Asmal's suggestion that extending the life span of truth commissions would destroy 'the magic' is a somewhat cynical expression, perhaps unintentional, of the view that commissions are really functional bodies or instruments in a path of national transition rather than actually intended to investigate victim cases and establish answers. See Asmal, Asmal and Roberts (1996, p.27).

<sup>56</sup> See TRC Report, Vol. 3, Chap. 1, graphs E1A.1-1 and E2.1-1 on page 9.

<sup>57</sup> It was largely through conscription into the South African Defence Force and deployment in Namibia and later South African townships that most white South African families obtained 'direct' experience with the 'war'.

<sup>58</sup> Cited in TRC Report, Volume 1, Chapter 6, Appendix 2, pages 168 – 169.

<sup>59</sup> Although numerically the number of white deponents was low, they were often included 'disproportionately' in public HRV hearings as part of the TRC's efforts to depict its inclusive approach, as the public hearings were a key site of public education regarding what the TRC was about and who it was for. This emphasized a generic 'community of suffering' amongst victims, outside of politics, united through a common narrative of physical harm, regardless of affiliation. Suffering became the key victim identity, rather than political affiliation. While this may have laudable reconciliation intent, it tended to efface or de-emphasize the stark racial disparity in numerical terms.

<sup>60</sup> The question of including deaths of South African Defence Force soldiers in Namibia and Angola is a controversial one. In a sense, they were also 'casualties' of the political conflict. This forms part of a larger debate on 'combatants' and gross human rights in general, an issue the TRC faced with some difficulty.

<sup>61</sup> Document cited in TRC Report, Vol. 5, Chap. 9, p. 357. The Report notes that the document was drawn up by Deputy Minister of Foreign Affairs, DJ Nel, after consultation with the South African Police and the South African Broadcasting Corporation (SABC). Nel recommended that the 'systematic use' of these guidelines should receive high priority, and stated explicitly that these guidelines should apply to the SABC.

<sup>62</sup> For further explication of the notion of 'contramobilisation', see the TRC Report, Volume 2, Chapter 3, pp. 297 – 312.

<sup>63</sup> There is a considerable literature of books, articles, violence monitor reports and NGO publications mainly dating from the early to mid 1990s which deal with the question of the 'Third Force', but see for example (eds) C Schutte, I Liebenberg and A Minnaar *The Hidden Hand: Covert Operations in South Africa*, (2nd edition) Human Sciences Research Council, Pretoria, 1998.

<sup>64</sup> The TRC Report self-critically cites the violence of the 1990s period as one of its 'failures' in Volume 5, Chapter 6, p. 206. Paragraph 53 states that 'in particular, the Commission failed to make significant breakthroughs in relation to the violence of the 1990s. The events in question were extremely recent and few leads emerged from groups operating at the time. Thus few entry points for investigation were opened up and a great deal of further investigation is required.'

<sup>65</sup> The Third Force argument indirectly raises the question of the nature of command and control outside of a mechanistic analysis of 'orders', and posits a more cultural framework for legitimating security force activities. The "'culture of war' within organizations and social groupings equally mobilizes or constrains behaviors, and cannot be reduced to simplistic and monolithic 'chains of command'. Borders are set and approval given in multiple forms: through song and slogan, through medal and telex." See Fullard and Rousseau, forthcoming.

<sup>66</sup> For the TRC's perspectives on the 'Third Force', see TRC Report, Volume 2, Chapter 7,

pp. 692 – 710, and Volume 6, Section 4, Appendix, pp. 579 – 588.

<sup>67</sup> See Fullard and Rousseau, forthcoming.

<sup>68</sup> 'National Response to TRC Report', Joint Sitting of the National Assembly and the National Council of Provinces, 25 February 1999.

<sup>69</sup> Fullard and Rousseau, (2003b)

<sup>70</sup> The unit has undergone a number of name changes, being variously known as the Human Rights Violations Unit and the Special National Projects Unit, both attached to the Directorate of Special Operations (DSO, more commonly referred to as the 'Scorpions'). The 'unit' now resides in the Priority Crimes Litigation Unit and is no longer attached to the DSO, falling more formally under the National Prosecuting Authority.

<sup>71</sup> See, for example, the current efforts by 'apartheid victims' to secure compensation through US courts against multinational corporations who enabled the apartheid government to implement aspects of apartheid through the provision of services, technology and so on. See the presentation by Michael Hausfeld, 'International Law and Human Rights – A Case Study: The Apartheid Reparations Law Suit', presented at [WISER](#), University of the Witwatersrand, Johannesburg, 21 October 2003.

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